IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

CHURCH OF SCIENTOLOGY, INTERNATIONAL, **Plaintiff/Respondent,** **vs.** **GERALD ARMSTRONG,** **Defendant/Appellant.**	)	**NO. A075027**

CLERK'S TRANSCRIPT ON APPEAL

FROM A JUDGMENT MADE AND ENTERED

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

VOLUME 15

For the Plaintiff/Respondent:

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY COURTS

DEPARTMENT 1

CHURCH OF SCIENTOLOGY, INTERNATIONAL, **Plaintiff,** **vs.** **GERALD ARMSTRONG,** **Defendant.**	**No. 157680**

GARY W. THOMAS	**JUDGE**
JOHN P. MONTGOMERY	**COURT EXECUTIVE OFFICER**
ELAINE PASSARIS	**REPORTER**

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PLAINTIFF'S OBJECTIONS TO ARMSTRNG'S EVIDENCE SUMBITTED IN OPPOSITION TO MOTION NFOR SUMMARY ADJUEICATION OF FOURTH, SIXTH, AND ELEVENTH CAUSES OF ACTION 1/24/95 4225

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FILED 3948
JAN 13 1995
HOWARD HANSON
MARIN COUNTY CLERK
by M. Louten, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. 157 680

ARMSTRONG'S EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION

Date: 1/27/95
Time: 9:00 a.m.
Dept: One
Trial Date: May 18, 1995

VOLUME ONE

Exhibit 1	Declaration of Gerald Armstrong
Exhibit 1 (A)	Memorandum of Intended Decision of Judge Paul G. Breckenridge, Jr, filed June 22, 1984 in _Church of Scientology v. Armstrong_, Los Angeles Superior Court No. C 420153 (_Armstrong I_).
Exhibit 1 (B)	Stipulation between Michael J. Flynn and Michael Lee Hertzberg.
Exhibit 1 (C)	Indemnity Agreement signed by Earle Cooley and Lawrence Heller
Exhibit 1 (D)	Excerpts of Deposition of Gerald Armstrong in the instant case.
Exhibit 1 (E)	_American Lawyer_, July/August, 1992 article, "The Two Faces of Scientology"
Exhibit 1 (F)	Title page and table of contents from the book _L. Ron Hubbard - Messiah or Madman_, by Bent Corydon published in 1987.

VOLUME TWO

Exhibit 2 Declaration of Ford Greene

Exhibit 2 (A) Excerpts from transcript of proceeding before Honorable Ronald M. Sohigian, May 26, 1992.

Exhibit 2 (B) Excerpts from transcript of deposition of Lynn Farny taken July 27, 1994.

Exhibit 2 (C) Release signed by Vicki Aznaran in favor of Scientology providing for liquidated damages in the amount of $10,000.

Exhibit 2 (D) Release signed by Richard Aznaran in favor of Scientology providing for liquidated damages in the amount of $10,000.

DATED: January 13, 1995

HUB LAW OFFICES

By:____________________
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. **157 680** **DECLARATION OF GERALD ARMSTRONG IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION** Date: 1/27/95 Time: 9:00 a.m. Dept: One Trial Date: May 18, 1995

I, Gerald Armstrong, declare:

1. I am making this declaration in support of my opposition to Scientology's pending motion for summary adjudication.

2. I was a Scientologist from 1969 through 1981, held many staff positions through that period and became very familiar with the organization's policies and practices. Throughout 1980 and 1981 I assembled and studied an archive of materials relating to Scientology's founder L. Ron Hubbard and provided those materials pursuant to contract to an outside writer Omar Garrison.

Discovering that Hubbard had lied about much of his past, credentials and accomplishments I left at the end of 1981. Because of my exposure of Hubbard's lies Scientology sued me in 1982, Scientology v. Armstrong, Los Angeles Superior Court No. C 420153 (Armstrong I). The decision of Judge Paul G. Breckenridge, Jr. who presided at my trial in 1984 is appended hereto as Exhibit A. This decision, which describes Scientology's policy and practice of threat and retribution Hubbard called "fair game," was affirmed on appeal. Scientology v. Armstrong, 283 Cal. Rptr. 917, at p. 920. Judge Breckenridge's appendix to the decision describes some of my history with Scientology and some of the instances of fair game toward me which formed the basis for my cross-complaint against Scientology

3. Throughout Armstrong I I was represented by Boston attorney Michael Flynn, who was the prime mover in a nation-wide effort to obtain legal redress for Scientology's victims of its fair game activities. From 1985 through 1986 I also worked for Mr. Flynn on his Scientology cases in his Boston office, and was very familiar with years of fair game actions against him by Scientology.

4. On December 5, 1986 I was flown to Los Angeles, as were several other of Mr. Flynn's clients with claims against the organization to participate in a "global settlement." After my arrival in LA I was shown a copy of a document entitled "Mutual Release of All Claims and Settlement Agreement," hereinafter referred to as "the settlement agreement," and some other documents, which I was expected to sign.

5. Upon reading the settlement agreement draft I was

shocked and heartsick. I told Mr. Flynn that the condition of "strict confidentiality and silence with respect to [my] experiences with the [organization]" (settlement agreement, para. 7D), since it involved over seventeen years of my life, was impossible. I told him that the "liquidated damages" clause (para. 7D) was outrageous; that pursuant to the settlement agreement I would have to pay $50,000.00 if I told a doctor or psychologist about my experiences from those years, or if I put on a resume what positions I had held during my organization years. I told Mr. Flynn that the requirements of non-amenability to service of process (para. 7H) and non-cooperation with persons or organizations adverse to the organization (paras. 7G, 10) were obstructive of justice. I told him that I felt that agreeing to leave the organization's appeal of the decision in Armstrong and not respond to any subsequent appeals (para. 4B) was unfair to the courts and all the people who had been helped by the decision. I told Mr. Flynn that an affidavit the organization was demanding that I sign along with the settlement agreement was false. The affidavit stated, inter alia, that my disagreements with the organization had been with prior management, and not with the then-current leadership. In fact there had been no management change and I had the same disagreements with the organization's "fair game" policies and actions which had continued without change up to the time of the settlement. I told him that I was being asked to betray everything and everyone I had fought for against an organization which was based upon injustice.

6. In answer to my objections to the settlement agreement, Mr. Flynn said that the silence and liquidated damages clauses,

and anything which called for obstruction of justice were not worth the paper they were printed on. He said the same thing a number of times and a number of ways; e.g., that I could not contract away my Constitutional rights; that the conditions were unenforceable. He said that he had advised the organization attorneys that those conditions in the settlement agreement were not worth the paper they were printed on, but that the organization, nevertheless, insisted on their inclusion in the settlement agreement and would not agree to any changes. He pointed out the clauses concerning my release of all claims against the organization to date and its release of all claims against me to date (paras. 1, 4, 5, 6, 8) and said that they were the essential elements of the settlement and were what the organization was paying for.

7. Mr. Flynn also said that everyone was sick of the litigation and wanted to get on with their lives. He said that he was sick of the litigation, the threats to him and his family and wanted out. He said that as a part of the settlement he and all co-counsels had agreed to not become involved in organization-related litigation in the future. He expressed a deep concern that the courts in this country cannot deal with the organization and its lawyers and their contemptuous abuse of the justice system. He said that if I didn't sign the documents all I had to look forward to was more years of harassment and misery. One of Mr. Flynn's other clients, Edward Walters, who was in the room with us during this discussion, yelled at me, accusing me of killing the settlement for everyone, and that everyone else had signed or would sign, and everyone else wanted the settlement.

Mr. Flynn said that the organization would only settle with everyone together; otherwise there would be no settlement. He did agree to ask the organization to include a clause in my settlement agreement allowing me to keep my creative works relating to L. Ron Hubbard or the organization (para. 7L).

8. Mr. Flynn said that a major reason for the settlement's "global" form was to give the organization the opportunity to change its combative attitude and behavior by removing the threat he and his clients represented to it. He argued that the organization's willingness to pay us substantial sums of money, after its agents and attorneys had sworn for years to pay us "not one thin dime" was evidence of a philosophic shift within the organization. I argued that the settlement agreement evidenced the unchanged philosophy of fair game, and that if the organization did not use the opportunity to transform its antisocial nature and actions toward its members, critics and society I would, a few years hence, because of my knowledge of organization fraud and fair game, be again embroiled in its litigation and targeted for extralegal attacks.

9. Regarding the affidavit the organization required that I sign, Mr. Flynn said that the "disagreement with prior management" could be rationalized as being a disagreement with L. Ron Hubbard, and since Mr. Hubbard had died in January 1986 it could be said that I no longer had that disagreement. Mr. Flynn said that the organization's attorneys had promised that the affidavit, which all the settling litigants were signing, would only be used by the organization if I began attacking it after the settlement, and since I had no intention of attacking the organization the

affidavit would never see the light of day.

10. During my meeting with Mr. Flynn in Los Angeles I found myself facing a dilemma which I reasoned through in this way. If I refused to sign the settlement agreement and affidavit all the other settling litigants, many of whom had been flown to Los Angeles in anticipation of a settlement, would be extremely disappointed and would continue to be subjected to organization harassment for an unknown period of time. I had been positioned in the settlement drama as a deal-breaker and would undoubtedly lose the support of some if not all of these litigants, several of whom were key witnesses in my case against the organization. Although I was certain that Mr. Flynn and my other lawyers would not refuse to represent me if I did not sign the documents I also knew that they all would view me as a deal-breaker and they would be as disappointed as the other litigants in not ending the litigation they desperately wanted out of. The prospect of continuing the litigation with unhappy and unwilling attorneys on my side, even though my cross-complaint was set for trial within three months, was distressing. On the other hand, if I signed the documents, all my co-litigants, some of whom I knew to be in financial trouble, would be happy, the stress they felt would be reduced and they could get on with their lives. Mr. Flynn and the other lawyers would be happy and the threat to them and their families would be removed. The organization would have the opportunity they said they desired to clean up their act and start anew. I would have the opportunity to get on with the next phase of my life and the financial wherewithal to do so. I was also not unhappy to at that time not have to testify in all the litigation

nor to respond to the media's frequent questions. If the organization continued its fair game practices toward me I knew that I would be left to defend myself and I accepted that fact. So, armed with Mr. Flynn's advice that the conditions I found so offensive in the settlement agreement were not worth the paper they were printed on, and the knowledge that the organization's attorneys were also aware of that legal opinion, I put on a happy face and the following day went through the charade of a videotaped signing.

11. It was my understanding and intention at the time of the settlement that I would honor the silence and confidentiality conditions of the settlement agreement, and that the organization had agreed to do likewise.

12. There were absolutely no negotiations involving me in the liquidated damages provision. The figure of $50,000 per utterance was never approved by me, and I would never have approved if it had been presented to me for approval. It is not reflective of and has no relationship of any kind to any actual damages Scientology would suffer for each utterance I might make of my experiences inside the organization. Those actual damages are zero. In December, 1986 when I protested to Mr. Flynn the ridiculous sum and idea of liquidated damages he stated "it's not worth the paper it's printed on." The discussion did not go beyond that.

13. Prior to signing the "settlement agreement" I met briefly with attorney Michael Walton and discussed the liquidated damages provision with him. He said that in his opinion the liquidated damages provision would have to be reciprocal and apply

to Scientology for it to be enforceable against me, that is to say that Scientology would have to remain silent about me and my experiences, otherwise it would be liable to me for the same liquidated damages.

14. Two documents relating to the 1986 "settlement," a "Stipulation" dated December 10, 1986 between Michael Flynn and Scientology lawyers John Peterson and Michael Hertzberg, and an "Indemnity Agreement" signed by Scientology lawyers Lawrence Heller and Earle Cooley, appended hereto as Exhibits B and C, I did not see and did not know of until 1990 after Scientology filed them in its appeal from the Breckenridge decision.

15. After the settlement, and after I was threatened a number of times by Scientology lawyer Lawrence Heller with being sued, even if I testified pursuant to a subpoena, I had a conversation concerning the settlement with attorney Julia Dragojevic, Mr. Flynn's co-counsel in Armstrong I. She expressed to me that she had a serious concern about the legality of the "settlement agreement," and about the impropriety of agreeing to not further represent people in Scientology-related litigation.

16. Scientology makes the charge that I was hired by attorney Joseph Yanny as a paralegal to work on the Aznaran case. I wasn't. The only thing I did for Mr. Yanny on the Aznaran case was to write and/or execute two declarations as a percipient witness.

17. Scientology claims that I discussed my experiences inside the organization with CNN in a 1992 video interview and with William Horne a writer for American Lawyer magazine in 1992. Both CNN and Mr. Horne contacted me because of my post-settlement

litigation and that is what I discussed with them. Scientology claims in its Separate Statement in support of its instant motion that I "made statements concerning [my] knowledge of and experiences with the Church of Scientology during that interview," and that such are shown in pages of my deposition of October 7, 1992 at pages 341, 342 and 348 through 360. Scientology did not include pages 349 through 359 of said deposition in its evidence. I am now appending them hereto as Exhibit D. They do not contain what Scientology claims they contain. Appended hereto as Exhibit E is a copy of the section of the article by Mr. Horne which mention me which was published in the July/August, 1992 issue of American Lawyer. This article also contains no mention of my experiences inside Scientology. After the December, 1986 settlement I continued to read books and other information concerning Hubbard and Scientology, and much of the knowledge I gained after 1986 is inseparable from the earlier knowledge. Appended hereto, for example, as Exhibit F, is a copy of the title page and table of contents from the book L. Ron Hubbard - Messiah or Madman, by Bent Corydon published in 1987. Other major works on Hubbard I read after 1986 are A Piece of Blue Sky by Jon Atack, and Barefaced Messiah by Russell Miller.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Anselmo, California, on January 13, 1995

GERALD ARMSTRONG

FILED
JUN 22 1984
John J. Corcoran,
Rosie M. Hart
BY ROSIE M. HART, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Plaintiff,
vs.
GERALD ARMSTRONG,
Defendant.

MARY SUE HUBBARD,
Intervenor.

No. C 420153

MEMORANDUM OF INTENDED DECISION

In this matter heretofore taken under submission, the Court announces its intended decision as follows:

As to the tort causes of action, plaintiff, and plaintiff in intervention are to take nothing, and defendant is entitled to Judgment and costs.

As to the equitable actions, the court finds that neither plaintiff has clean hands, and that at least as of this time, are not entitled to the immediate return of any document or objects presently retained by the court clerk. All exhibits

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EXHIBIT H

received in evidence or marked for identification, unless specifically ordered sealed[1], are matters of public record and shall be available for public inspection or use to the same extent that any such exhibit would be available in any other lawsuit. In other words they are to be treated henceforth no differently than similar exhibits in other cases in Superior Court. Furthermore, the "inventory list and description," of materials turned over by Armstrong's attorneys to the court, shall not be considered or deemed to be confidential, private, or under seal.

All other documents or objects presently in the possession of the clerk (not marked herein as court exhibits) shall be retained by the clerk, subject to the same orders as are presently in effect as to sealing and inspection, until such time as trial court proceedings are concluded as to the severed cross complaint. For the purposes of this Judgment, conclusion will occur when any motion for a new trial has been denied, or the time within such a motion must be brought has expired without such a motion being made. At that time, all documents neither received in evidence, nor marked for identification only, shall be released by the clerk to plaintiff's representatives. Notwithstanding this order, the parties may at any time by written stipulation filed with the clerk obtain release of any or all such unused materials.

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[1] Exhibits in evidence No. 500-40; JJJ; KKK; LLL: MMM; NNN; OOO; PPP; QQQ; RRR; and 500-QQQQ.

Exhibits for identification only No. JJJJ; Series 500-DDDD, EEEE, FFFF, GGGG, HHHH, IIII, NNNN-1, OOOO, ZZZZ, CCCCC, GGGGG, IIIII, KKKKK, LLLLL, OOOOO, PPPPP, QQQQQ, BBBBBB, OOOOOO, BBBBBBB.

Defendant and his counsel are free to speak or communicate upon any of Defendant Armstrong's recollections of his life as a Scientologist or the contents of any exhibit received in evidence or marked for identification and not specifically ordered sealed. As to all documents, and other materials held under seal by the clerk, counsel and the defendant shall remain subject to the same injunctions as presently exist, at least until the conclusion of the proceedings on the cross complaint. However, in any other legal proceedings in which defense counsel, or any of them, is of record, such counsel shall have the right to discuss exhibits under seal, or their contents, if such is reasonably necessary and incidental to the proper representation of his or her client.

Further, if any court of competent jurisdiction orders defendant or his attorney to testify concerning the fact of any such exhibit, document, object, or its contents, such testimony shall be given, and no violation of this order will occur. Likewise, defendant and his counsel may discuss the contents of any documents under seal or of any matters as to which this court has found to be privileged as between the parties hereto, with any duly constituted Governmental Law Enforcement Agency or submit any exhibits or declarations thereto concerning such document or materials, without violating any order of this court.

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This court will retain jurisdiction to enforce, modify, alter, or terminate any injunction included within the Judgment.

Counsel for defendant is ordered to prepare, serve, and file a Judgment on the Complaint and Complaint in Intervention, and Statement of Decision if timely and properly requested, consistent with the court's intended decision.

Discussion

The court has found the facts essentially as set forth in defendant's trial brief, which as modified, is attached as an appendix to this memorandum. In addition the court finds that while working for L.R. Hubbard (hereinafter referred to as LRH), the defendant also had an informal employer-employee relationship with plaintiff Church, but had permission and authority from plaintiffs and LRH to provide Omar Garrison with every document or object that was made available to Mr. Garrison, and further, had permission from Omar Garrison to take and deliver to his attorneys the documents and materials which were subsequently delivered to them and thenceforth into the custody of the County Clerk.

Plaintiff Church has made out a prima facie case of conversion (as bailee of the materials), breach of fiduciary duty, and breach of confidence (as the former employer who provided confidential materials to its then employee for certain specific purposes, which the employee later used for other purposes to plaintiff's detriment). Plaintiff Mary Jane Hubbard has likewise made out a prima facie case of conversion and invasion [illegible] privacy (misuse by a person of private matters entrusted to him for certain specific purposes only).

While defendant has asserted various theories of defense, the basic thrust of his testimony is that he did what he did, because he believed that his life, physical and mental well being, as well as that of his wife were threatened because the organization was aware of what he knew about the life of LRH, the secret machinations and financial activities of the Church, and his dedication to the truth. He believed that the only way he could defend himself, physically as well as from harassing lawsuits, was to take from Omar Garrison those materials which would support and corroborate everything that he had been saying within the Church about LRH and the Church, or refute the allegations made against him in the April 22 Suppressive Person Declare. He believed that the only way he could be sure that the documents would remain secure for his future use was to send them to his attorneys, and that to protect himself, he had to go public so as to minimize the risk that LRH, the Church, or any of their agents would do him physical harm.

This conduct if reasonably believed in by defendant and engaged in by him in good faith, finds support as a defense to the plaintiff's charges in the Restatements of Agency, Torts, and case law.

Restatement of Agency, Second, provides:

> "Section 395f: An agent is privileged to reveal information confidentially acquired by him in the course of his agency in the protection of a superior interest of himself or a third person.

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"Section 418: An agent is privileged to protect interests of his own which are superior to those of the principal, even though he does so at the expense of the principal's interest or in disobedience to his orders."

Restatement of torts, Second, section 271:

"One is privileged to commit an act which would otherwise be a trespass to or a conversion of a chattel in the possession of another, for the purpose of defending himself or a third person against the other, under the same conditions which would afford a privilege to inflict harmful or offensive contact upon the other for the same purpose."

The Restatement of Torts, Second, section 652a, as well as case law, make it clear that not all invasions of privacy are unlawful or tortious. It is only when the invasion is unreasonable that it becomes actionable. Hence, the trier of fact must engage in a balancing test, weighing the nature and extent of the invasion, as against the purported justification therefore to determine whether in a given case, the particular invasion or intrusion was unreasonable.

In addition the defendant has asserted as a defense the principal involved in the case of Willig v. Gold, 75 Cal.App.2d, 809, 814, which holds that an agent has a right or privilege to disclose his principal's dishonest acts to the party prejudicially affected by them.

Plaintiff Church has asserted and obviously has certain rights arising out of the First Amendment. Thus, the court cannot, and has not, inquired into or attempted to evaluate the

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merits, accuracy, or truthfulness of Scientology or any of its precepts as a religion. First Amendment rights, however, cannot be utilized by the Church or its members, as a sword to preclude the defendant, whom the Church is suing, from defending himself. Therefore, the actual practices of the Church or its members, as it relates to the reasonableness of the defendant's conduct and his state of mind are relevant, admissible, and have been considered by the court.

As indicated by its factual findings, the court finds the testimony of Gerald and Jocelyn Armstrong, Laurel Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison, Kima Douglas, and Howard Schomer to be credible, extremely persuasive, and the defense of privilege or justification established and corroborated by this evidence. Obviously, there are some discrepancies or variations in recollections, but these are the normal problems which arise from lapse of time, or from different people viewing matters or events from different perspectives. In all critical and important matters, their testimony was precise, accurate, and rang true. The picture painted by these former dedicated Scientologists, all of whom were intimately involved with LRH, or Mary Jane Hubbard, or of the Scientology Organization, is on the one hand pathetic, and on the other, outrageous. Each of these persons literally gave years of his or her respective life in support of a man, LRH, and his ideas. Each has manifested a waste and loss or frustration which is incapable of description. Each has broken with the movement for a variety of reasons, but at the same time, each is, still bound by the knowledge that the Church has

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in its posse. .on his or her most inner oughts and confessions, all recorded in "pre-clear (P.C.) folders" or other security files of the organization, and that the Church or its minions is fully capable of intimidation or other physical or psychological abuse if it suits their ends. The record is replete with evidence of such abuse.

In 1970 a police agency of the French Government conducted an investigation into Scientology and concluded, "this sect, under the pretext of 'freeing humans' is nothing in reality but a vast enterprise to extract the maximum amount of money from its adepts by (use of) pseudo-scientific theories, by (use of) 'auditions' and 'stage settings' (lit. to create a theatrical scene') pushed to extremes (a machine to detect lies, its own particular phraseology . .), to estrange adepts from their families and to exercise a kind of blackmail against persons who do not wish to continue with this sect."[2] From the evidence presented to this court in 1984, at the very least, similar conclusions can be drawn. In addition to violating and abusing its own members civil rights, the organization over the years with its "Fair Game" doctrine has harassed and abused those persons not in the Church whom it perceives as enemies. The organization clearly is schizophrenic and paranoid, and this bizarre combination seems to be a reflection of its founder LRH. The evidence portrays a man who has been virtually a pathological liar when it comes to his history, background, [illegible] achievements. The writings and documents in evidence additionally reflect his egoism, greed, avarice, lust for power, and vindictiveness and aggressiveness against persons perceived by him to be disloyal or hostile. At the same time it appears that he is charismatic and highly capable of motivating, organizing, controlling, manipulating, and inspiring his adherents. He has been referred to during the trial as a "genius," a "revered person," a man who was "viewed by his followers in awe." Obviously, he is and has been a very complex person, and that complexity is further reflected in his alter ego, the Church of Scientology. Notwithstanding protestations to the contrary, this court is satisfied that LRH runs the Church in all ways through the Sea Organization, his role of Commodore, and the Commodore's Messengers.[3] He has, of course, chosen to go into "seclusion," but he maintains contact and control through the top messengers. Seclusion has its light and dark side too. It adds to his mystique, and yet shields him from accountability and subpoena or service of summons.

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[2] Exhibit 500-HHHHH.

LRH's wife, Mary Sue Hubbard is also a plaintiff herein. On the one hand she certainly appeared to be a pathetic individual. She was forced from her post as Controller, convicted and imprisoned as a felon, and deserted by her husband. On the other hand her credibility leaves much to be desired. She struck the familiar pose of not seeing, hearing, or knowing a [illegible] evil. Yet she was the head of the Guardian Office for years and among other things, authored the infamous order "GO 121669"[4] which directed culling of supposedly confidential P.C. files/folders for purposes of internal security. In her testimony she expressed the feeling that defendant by delivering the documents, writings, letters to his attorneys, subjected her to mental rape. The evidence is clear and the court finds that defendant and Omar Garrison had permission to utilize these documents for the purpose of Garrison's proposed biography. The only other persons who were shown any of the documents were defendant's attorneys, the Douglasses, the Dincalcis, and apparently some documents specifically affecting LRH's son "Nibs," were shown to "Nibs." The Douglasses and Dincalcises were disaffected Scientologists who had a concern for their own safety and mental security, and were much in the same situation as defendant. They had not been declared as suppressive, but Scientology had their P.C. folders, as well as other confessions, and they were extremely apprehensive. They did not see very many of the documents, and it is not entirely clear which they saw. At any rate Mary Sue Hubbard did not appear to be so much distressed by this fact, as by the fact that Armstrong had given the documents to Michael Flynn, whom the Church considered its foremost lawyer-enemy.⁵ However, just as the plaintiffs have First Amendment rights, the defendant has a Constitutional right to an attorney of his own choosing. In legal contemplation the fact that defendant selected Mr. Flynn rather than some other lawyer cannot by itself be tortious. In determining whether the defendant unreasonably invaded Mrs. Hubbard's privacy, the court is satisfied the invasion was slight, and the reasons and justification for defendant's conduct manifest. Defendant was told by Scientology to get an attorney. He was declared an enemy by the Church. He believed, reasonably, that he was subject to "fair game." The only way he could defend himself, his integrity, and his wife was to take that which was available to him and place it in a safe harbor, to wit, his lawyer's custody. He may have engaged in overkill, in the sense that he took voluminous materials, some of which appear only marginally relevant to his defense. But he was not a lawyer and cannot be held to that precise standard of judgment. Further, at the time that he was accumulating the material, he was terrified and undergoing severe emotional turmoil. The court is satisfied that he did not unreasonably intrude upon Mrs. Hubbard's privacy under the circumstances by in effect simply making his knowledge that of his attorneys. It is, of course, rather ironic that the person who authorized G.O. order 121669 should complain about an invasion of privacy. The

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[3] See Exhibit K: Flag Order 3729 - 15 September 1978 "Commodore's Messengers."

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[4] Exhibit AAA.

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5. "No, I think my emotional distress and upset is the fact that someone took papers and materials without my authorization and then gave them to your Mr. Flynn." Reporter's Transcript, p. 1006.

practice of culling supposedly confidential "P.C. folders or files" to obtain information for purposes of intimidation and/or harassment is repugnant and outrageous. The Guardian's Office, which plaintiff headed, was no respector of anyone's civil rights, particularly that of privacy. Plaintiff Mary Sue Hubbard's cause of action for conversion must fail for the same reason as plaintiff Church. The documents were all together in Omar Garrison's possession. There was no rational way the defendant could make any distinction.

Insofar as the return of documents is concerned, matters which are still under seal may have evidentiary value in the trial of the cross complaint or in other third party litigation. By the time that proceedings on the cross complaint are concluded, the court's present feeling is that those documents or objects not used by that time should be returned to plaintiff. However, the court will reserve jurisdiction to reconsider that should circumstances warrant.

Dated: June 20, 1984

PAUL G. BRECKENRIDGE, JR.
Judge of the Superior Court

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.
ATTEST SEP 11 1984 19
JOHN J. CORCORAN, County Clerk and Clerk of the Superior Court of California, County of Los Angeles
BY S. Hurst DEPUTY
S. HURST

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Appendix

Defendant Armstrong was involved with Scientology from 1969 through 1981, a period spanning 12 years. During that time he was a dedicated and devoted member who revered the founder, L. Ron Hubbard. There was little that Defendant Armstrong would not do for Hubbard or the Organization. He gave up formal education, one-third of his life, money and anything he could give in order to further the goals of Scientology, goals he believed were based upon the truth, honesty, integrity of Hubbard and the Organization.

From 1971 through 1981, Defendant Armstrong was a member of the Sea Organization, a group of highly trained scientologists who were considered the upper echelon of the Scientology organization. During those years he was placed in various locations, but it was never made clear to him exactly which Scientology corporation he was working for. Defendant Armstrong understood that, ultimately, he was working for L. Ron Hubbard, who controlled all Scientology finances, personnel, and operations while Defendant was in the Sea Organization.

Beginning in 1979 Defendant Armstrong resided at Gilman Hot Springs, California, in Hubbard's "Household Unit." The Household Unit took care of the personal wishes and needs of Hubbard at many levels. Defendant Armstrong acted as the L. Ron Hubbard Renovations In-Charge and was responsible for renovations, decoration, and maintenance of Hubbard's home and office at Gilman Hot Springs.

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In January of 1980 there was an announcement of a possible raid to be made by the FBI or other law enforcement agencies of the property. Everyone on the property was required by Hubbard's representatives, the Commodore's Messengers, to go through all documents located on the property and "vet" or destroy anything which showed that Hubbard controlled Scientology organizations, retained financial control, or was issuing orders to people at Gilman Hot Springs.

A commercial paper shredder was rented and operated day and night for two weeks to destroy hundreds of thousands of pages of documents.

During the period of shredding, Brenda Black, the individual responsible for storage of Hubbard's personal belongings at Gilman Hot Springs, came to Defendant Armstrong with a box of documents and asked whether they were to be shredded. Defendant Armstrong reviewed the documents and found that they consisted of a wide variety of documents including Hubbard's personal papers, diaries, and other writings from a time before he started Dianetics in 1950, together with documents belonging to third persons which had apparently been stolen by Hubbard or his agents. Defendant Armstrong took the documents from Ms. Black and placed them in a safe location on the property. He then searched for and located another twenty or more boxes containing similar materials, which were poorly maintained.

On January 8, 1980, Defendant Armstrong wrote a petition to Hubbard requesting his permission to perform the research for a biography to be done about his life. The petition states

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that Defendant Armstrong had located the subject materials and lists of a number of activities he wished to perform in connection with the biography research.

Hubbard approved the petition, and Defendant Armstrong became the L. Ron Hubbard Personal Relations Officer Researcher (PPRO Res). Defendant claims that this petition and its approval forms the basis for a contract between Defendant and Hubbard. Defendant Armstrong's supervisor was then Laurel Sullivan, L. Ron Hubbard's Personal Public Relations Officer.

During the first part of 1980, Defendant Armstrong moved all of the L. Ron Hubbard Archives materials he had located at Gilman Hot Springs to an office in the Church of Scientology Cedars Complex in Los Angeles. These materials comprised approximately six file cabinets. Defendant Armstrong had located himself in the Cedars Complex, because he was also involved in "Mission Corporate Category Sort-Out," a mission to work out legal strategy. Defendant Armstrong was involved with this mission until June of 1980.

It was also during this early part of 1980 that Hubbard left the location in Gilman Hot Springs, California, and went into hiding. Although Defendant Armstrong was advised by Laurel Sullivan that no one could communicate with Hubbard, Defendant Armstrong knew that the ability for communication existed, because he had forwarded materials to Hubbard at his request in mid-1980.

Because of this purported inability to communicate with Hubbard, Defendant Armstrong's request to purchase biographical materials of Hubbard from people who offered them for sale went to the Commoc. 's Messenger Organization, the personal representatives of Hubbard.

In June of 1980 Defendant Armstrong became involved in the selection of a writer for the Hubbard biography. Defendant Armstrong learned that Hubbard had approved of a biography proposal prepared by Omar Garrison, a writer who was not a member of Scientology. Defendant Armstrong had meetings with Mr. Garrison regarding the writing of the biography and what documentation and assistance would be made available to him. As understood by Mr. Garrison, Defendant Armstrong represented Hubbard in these discussions.

Mr. Garrison was advised that the research material he would have at his disposal were Hubbard's personal archives. Mr. Garrison would only undertake a writing of the biography if the materials provided to him were from Hubbard's personal archives, and only if his manuscript was subject to the approval of Hubbard himself.

In October of 1980 Mr. Garrison came to Los Angeles and was toured through the Hubbard archives materials that Defendant Armstrong had assembled up to that time. This was an important "selling point" in obtaining Mr. Garrison's agreement to write the biography. On October 30, 1980, an agreement was entered into between Ralston-Pilot, ncv. F/S/O Omar V. Garrison, and AOSH DK Publications of Copenhagen, Denmark, for the writing of a biography of Hubbard.

Paragraph 10B of the agreement states that:

> "Publisher shall use its best efforts to provide Author with an office, an officer assistant and/or

research assistant, office supplies and any needed archival and interview materials in connection with the writing of the Work."

The "research assistant" provided to Mr. Garrison was Defendant Armstrong.

During 1980 Defendant Armstrong exchanged correspondence with Intervenor regarding the biography project. Following his approval by Hubbard as biography researcher, Defendant Armstrong wrote to Intervenor on February 5, 1980, advising her of the scope of the project. In the letter Defendant stated that he had found documents which included Hubbard's diary from his Orient trip, poems, essays from his youth, and several personal letters, as well as other things.

By letter of February 11, 1980, Intervenor responded to Defendant, acknowledging that he would be carrying out the duties of Biography Researcher.

On October 14, 1980, Defendant Armstrong again wrote to Intervenor, updating her on "Archives materials" and proposing certain guidelines for the handling of those materials.

It was Intervenor who, in early 1981, ordered certain biographical materials from "Controller Archives" to be delivered to Defendant Armstrong. These materials consisted of several letters written by Hubbard in the 1920's and 1930's, Hubbard's Boy Scout books and materials, several old Hubbard family photographs, a diary kept by Hubbard in his youth, and several other items.

Defendant Armstrong received these materials upon the order of Intervenor, following his letter of October 15, 1980, to her in which Defendant stated, at page 7, that there were materials in the "Controller Archives" that would be helpful to him in the biography research.

After these materials were delivered to Defendant Armstrong, Intervenor was removed from her Scientology position of Controller in 1981, presumably because of her conviction for the felony of obstruction of justice in connection with the theft of Scientology documents from various government offices and agencies in Washington, D.C.

During the time Defendant Armstrong worked on the biography project and acted as Hubbard Archivist, there was never any mention that he was not to be dealing with Hubbard's personal documents or that the delivery of those documents to Mr. Garrison was not authorized.

For the first year or more of the Hubbard biography and archive project, funding came from Hubbard's personal staff unit at Gilman Hot Springs, California. In early 1981, however, Defendant Armstrong's supervisor, Laurel Sullivan, ordered him to request that funding come from what was known as SEA Org Reserves. Approval for this change in funding came from the SEA Org Reserves Chief and Watch Dog Committee, the top Commodores Messenger Organization unit, who were Hubbard's personal representatives.

From November of 1980 through 1981, Defendant Armstrong worked closely with Mr. Garrison, assembling Hubbard's archives into logical categories, copying them and arranging the copies of the Archives materials into bound volumes. Defendant Armstrong made two copies of almost all documents copied for

Mr. Garrison - one for Mr. Garrison and the other to remain in Hubbard Archives for reference or recopying. Defendant Armstrong created approximately 400 binders of documents. The vast majority of the documents for Mr. Garrison came from Hubbard's personal Archives, of which Defendant Armstrong was in charge. Materials which came from other Archives, such as the Controller Archives, were provided to Defendant Armstrong by Scientology staff members who had these documents in their care.

It was not until late 1981 that Plaintiff was to provide a person to assist on the biography project by providing Mr. Garrison with "Guardian Office' materials, otherwise described as technical materials relating to the operation of Scientology. The individual appointed for this task was Vaughn Young. Controller Archives and Guardian Office Archives had no connection to the Hubbard Archives, which Defendant Armstrong created and maintained as Hubbard's personal materials.

In addition to the assemblage of Hubbard's Archives, Defendant Armstrong worked continually on researching and assembling materials concerning Hubbard by interviewing dozens of individuals, including Hubbard's living aunt, uncle, and four cousins. Defendant Armstrong did a geneology study of Hubbard's family and collected, assembled, and read hundreds of thousands of pages of documentation in Hubbard's Archives.

During 1980 Defendant Armstrong remained convinced of Hubbard's honesty and integrity and believed that the representations he had made about himself in various publications were truthful. Defendant Armstrong was devoted to

Hubbard and was convinced that any information which he discovered to be unflattering of Hubbard or contradictory to what Hubbard has said about himself, was a lie being spread by Hubbard's enemies. Even when Defendant Armstrong located documents in Hubbard's Archives which indicated that representations made by Hubbard and the Organization were untrue, Defendant Armstrong would find some means to "explain away" the contradictory information.

Slowly, however, throughout 1981, Defendant Armstrong began to see that Hubbard and the Organization had continuously lied about Hubbard's past, his credentials, and his accomplishments. Defendant Armstrong believed, in good faith, that the only means by which Scientology could succeed in what Defendant Armstrong believed was its goal of creating an ethical environment on earth, and the only way Hubbard could be free of his critics, would be for Hubbard and the Organization to discontinue the lies about Hubbard's past, his credentials, and accomplishments. Defendant Armstrong resisted any public relations piece or announcement about Hubbard which the L. Ron Hubbard Public Relations Bureau proposed for publication which was not factual. Defendant Armstrong attempted to change and make accurate the various "about the author" sections in Scientology books, and further, Defendant rewrote or critiqued several of these and other publications for the L. Ron Hubbard Public Relations Bureau and various Scientology Organizations. Defendant Armstrong believed and desired that the Scientology Organization and its leader discontinue the perpetration of the

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massive fraud upon the innocent followers of Scientology, and the public at large.

Because of Defendant Armstrong's actions, in late November of 1981, Defendant was requested to come to Gilman Hot Springs by Commodore Messenger Organization Executive, Cirrus Slevin. Defendant Armstrong was ordered to undergo a "security check," which involved Defendant Armstrong's interrogation while connected to a crude Scientology lie detector machine called an E-meter.

The Organization wished to determine what materials Defendant Armstrong had provided to Omar Garrison. Defendant Armstrong was struck by the realization that the Organization would not work with him to correct the numerous fraudulent representations made to followers of Scientology and the public about L. Ron Hubbard and the Organization itself. Defendant Armstrong, who, for twelve years of his life, had placed his complete and full trust in Mr. and Mrs. Hubbard and the Scientology Organization, saw that his trust had no meaning and that the massive frauds perpetrated about Hubbard's past, credentials, and accomplishments would continue to be spread.

Less than three weeks before Defendant Armstrong left Scientology, he wrote a letter to Cirrus Slevin on November 25, 1981, in which it is clear that his intentions in airing the inaccuracies, falsehoods, and frauds regarding Hubbard were done in good faith. In his letter he stated as follows:

> "If we present inaccuracies, hyperbole or downright lies as fact or truth, it doesn't matter what slant we give them, if

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disproved the man will look, to outsiders at least, like a charlatan. This is what I'm trying to prevent and what I've been working on the past year and a half.

. . .

"and that is why I said to Norman that it is up to us to insure that everything which goes out about LRH is one hundred percent accurate. That is not to say that opinions can't be voiced, they can. And they can contain all the hype you want. But they should not be construed as facts. And anything stated as a fact should be documentable.

"we are in a period when 'investigative reporting' is popular, and when there is relatively easy access to documentation on a person. We can't delude ourselves I believe, if we want to gain public acceptance and cause some betterment in society, that we can get away with statements, the validity of which we don't know.

"The real disservice to LRH, and the ultimate make-wrong is to go on assuming that everything he's ever written or said is one hundred percent accurate and publish it as such without verifying it. I'm

> talking here about biographical or non-technical writings. This only leads, should any of his statements turn out to be inaccurate, to a make-wrong of him, and consequently his technology.
>
> "That's what I'm trying to remedy and prevent.
>
> . . .
>
> "To say that LRH is not capable of hype, errors or lies is certanly ^sic] not granting him much of a beingness. To continue on with the line that he has never erred nor lied is counterproductive. It is an unreal attitude and too far removed from both the reality and people in general that it would widen public unacceptance.
>
> . . .
>
> ". . . That is why I feel the falsities must be corrected, and why we must verify our facts and present them in a favorable light."

The remainder of the letter contains examples of facts about Hubbard which Defendant Armstrong found to be wholly untrue or inaccurate and which were represented as true by the Hubbards and the Scientology Organization.

In December of 1981 Defendant Armstrong made the decision to leave the Church of Scientology. In order to continue in his commitment to Hubbard and Mr. Garrison in the biography project, he copied a large quantity of documents, which Mr. Garrison had requested or which would be useful to him for the biography. Defendant Armstrong delivered all of this material to Mr. Garrison the date he left the SEA Organization and kept nothing in his possession.

Thereafter, Defendant Armstrong maintained friendly relations with Hubbard's representatives by returning to the Archives office and discussing the various categories of materials. In fact on February 24, 1982, Defendant Armstrong wrote to Vaughn Young, regarding certain materials Mr. Young was unable to locate for Omar Garrison.

After this letter was written, Defendant Armstrong went to the Archives office and located certain materials Mr. Garrison had wanted which Hubbard representatives claimed they could not locate.

At the time Defendant Armstrong left the SEA Organization, he was disappointed with Scientology and Hubbard, and also felt deceived by them. However, Defendant Armstrong felt he had no enemies and felt no ill will toward anyone in the Organization or Hubbard, but still believed that a truthful biography should be written.

After leaving the SEA Organization, Defendant ARmstrong continued to assist Mr. Garrison with the Hubbard biography project. In the spring of 1982, Defendant Armstrong at Mr. Garrison's request, transcribed some of his interview tapes, copied some of the documentation he had, and assembled several more binders of copied materials. Defendant Armstrong also set up shelves for Mr. Garrison for all the biography research materials, worked on a cross-reference systems, and continued to do library research for the biography.

On February 18, 1982, the Church of Scientology International issued a "Suppressive Person Declare Gerry Armstrong," which is an official Scientology document issued against individuals who are considered as enemies of the Organization. Said Suppressive Person Declare charged that Defendant Armstrong had taken an unauthorized leave and that he was spreading destructive rumors about Senior Scientologists.

Defendant Armstrong was unaware of said Suppressive Person Declare until April of 1982. At that time a revised Declare was issued on April 22, 1982. Said Declare charged Defendant Armstrong with 18 different "Crimes and High Crimes and Suppressive Acts Against the Church." The charges included theft, juggling accounts, obtaining loans on money under false pretenses, promulgating false information about the Church, its founder, and members, and other untruthful allegations designed to make Defendant Armstrong an appropriate subject of the Scientology "Fair Game Doctrine." Said Doctrine allows any suppressive person to be "tricked, cheated, lied to, sued, or destroyed."

The second declare was issued shortly after Defendant Armstrong attempted to sell photographs of his wedding on board Hubbard's ship (in which Hubbard appears), and photographs belonging to some of his friends, which also included photos of L.R. Hubbard while in seclusion. Although Defendant Armstrong delivered the photographs to a Virgil Wilhite for sale, he never received payment or return of his friend's photographs. When he became aware that the Church had these photographs, he went to the Organization to request their return. A loud and boisterous argument ensued, and he eventually was told to leave the premises and get an attorney.

From his extensive knowledge of the covert and intelligence operations carried out by the Church of Scientology of California against its enemies (suppressive persons), Defendant Armstrong became terrified and feared that his life and the life of his wife were in danger, and he also feared he would be the target of costly and harassing lawsuits. In addition, Mr. Garrison became afraid for the security of the documents and believed that the intelligence network of the Church of Scientology would break and enter his home to retrieve them. Thus, Defendant Armstrong made copies of certain documents for Mr. Garrison and maintained them in a separate location.

It was thereafter, in the summer of 1982, that Defendant Armstrong asked Mr. Garrison for copies of documents to use in his defense and sent the documents to his attorneys, Michael Flynn and Contos & Bunch.

After the within suit was filed on August 2, 1982, Defendant Armstrong was the subject of harassment, including being followed and surveilled by individuals who admitted employment by Plaintiff; being assaulted by one of these individuals; being struck bodily by a car driven by one of these individuals; having two attempts made by said individuals apparently to involve Defendant Armstrong in a freeway

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automobile accident; having said individuals come onto Defendant Armstrong's property, spy in his windows, create disturbances, and upset his neighbors. During trial when it appeared that Howard Schomer (a former Scientologist) might be called as a defense witness, the Church engaged in a somewhat sophisticated effort to suppress his testimony. It is not clear how the Church became aware of defense intentions to call Mr. Schomer as a witness, but it is abundantly clear they sought to entice him back into the fold and prevent his testimony.

STIPULATION

The Church of Scientology of California, Mary Sue Hubbard, and Gerald Armstrong, by and through their undersigned counsel, hereby stipulate that in any retrial ordered by any appellate court in Church of Scientology of California v. Gerald Armstrong, LASC No. C 420153, the total damages awarded to the Plaintiff Church of Scientology of California and Plaintiff in Intervention Mary Sue Hubbard, combined for any and all causes of action, shall not exceed twenty five thousand and one dollars ($25,001.00).

DATED: 12/10/86

M. J. Fly

MICHAEL J. FLYNN
Attorney for Defendant
Gerald Armstrong

DATED: Dec 10, 1986

John G. Peterson

JOHN G. PETERSON
Attorney for Plaintiff
Church of Scientology
of California

DATED:

Michael Lee Hertz

MICHAEL LEE HERTZBERG
Attorney for Intervenor
Mary Sue Hubbard

INDEMNITY AGREEMENT

The undersigned hereby agree to jointly indemnify MICHAEL J. FLYNN within the limitation described in the last paragraph hereof, in the event, and only in the event, all of the following conditions occur:

1. The case of Church of Scientology of California v. Armstrong, Los Angeles Superior Court No. 420153 and Court of Appeal No. B005912 the appeal of which is presently pending before the California Appellate Courts, Second District, is reversed and the damage cause of action therein is remanded for a retrial by said the Appellate Court; and

2. The Plaintiff therein, Church of Scientology of California, retries any part of said action, pursuant to that remand, wherein the Church of Scientology of California prays for damages; and

3. Judgment is entered pursuant to said retrial in favor of the Church of Scientology of California and against Gerald Armstrong; and

3. Gerald Armstrong pays any part or all of said judgment for damages; and

4. Michael J. Flynn reimburses Gerald Armstrong for any part or all of the monies paid to the Church of Scientology of California by Gerald Armstrong pursuant to the said judgment.

If all of the foregoing conditions occur the undersigned will indemnify Michael J. Flynn only for the sum of money he has reimbursed Gerald Armstrong. In no event will the undersigned indemnify Michael J. Flynn for any sum greater than twenty-five thousand dollars.

Earle C. Cooley
EARLE C. COOLEY

LAWRENCE E. HELLER

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

--oOo--

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1-25, inclusive,

Defendants.

CERTIFIED COPY

No. BC 052395

RECEIVED
OCT 26 1992
HUB LAW OFFICES

DEPOSITION OF
GERALD ARMSTRONG

Volume III
October 7, 1992

REPORTED BY: LARRY BOSTOW, CSR# 5941

CNN interview that you've described?

A. It was after.

Q. Do you recall if it was before or after the first time you came down to Los Angeles for a hearing in this case, after it had been transferred to Los Angeles?

A. I believe it was before.

Q. Okay. How did you come to have an interview with Mr. Horne?

A. I think that it stems from my involvement in Scientology litigation, which subject he was covering in his story.

Q. Did he contact you, or did you contact him?

A. I believe he contacted me.

Q. By telephone or in person or in writing?

A. I believe by telephone.

Q. Do you recall approximately how long before your interview with Mr. Horne he contacted you by telephone?

A. It might have been as long as a couple of weeks.

Q. And your interview was in person, was it not?

A. Yes.

Q. As best you can recall, when Mr. Horne contacted you by telephone that first time, what did he say to you and what did you say to him?

A. I have no recollection.

Q. Did you have any subsequent telephone calls with Mr. Horne before you were interviewed by him in person?

A. I believe so.

Q. Do you recall how many?

A. Perhaps two.

Q. Can you distinguish between the two conversations in your mind, or do they blur together when you think about them?

A. I distinguish them by his proximity: As he approached, he made a call.

Q. As he approached San Anselmo from some other part of the country?

A. Correct.

Q. Do you recall what was said in the first conversation?

A. No.

Q. Do you recall anything that was said by either of you in the second conversation?

A. It related to logistics, when was he arriving.

Q. Approximately how much time did you spend with him after he had arrived?

A. I believe I spent, myself, perhaps an hour and a half with him.

Q. Do you know anyone else who spent time with him?

A. Mr. Greene spent some time with him.

Q. Do you recall how much time?

A. No.

Q. Was Mr. Greene present when you were interviewed by him?

A. Some of the time.

Q. Were you present when Mr. Greene was interviewed by him?

A. Some of the time.

Q. Where did your interview take place?

A. In the office and walking into San Anselmo, having lunch, and returning.

Q. Mr. Horne arrived at your office on the day of the interview, which date you don't recall; is that right?

A. I'm sorry. I didn't get that.

Q. Did Mr. Horne arrive on his own at your office?

A. Yes.

Q. Was he by himself?

A. Yes.

Q. Did he tape-record the interview?

A. No.

Q. Did he take notes?

A. At times.

Q. Do you remember the subjects that you discussed with Mr. Horne?

A. Broadly, yes.

Q. Did you tape the interview with Mr. Horne?

A. No.

Q. Did Mr. Greene?

A. I don't know.

MR. GREENE: God may have.

MS. BARTILSON: God records everything, Ford. Best court reporter of all.

Q. What subjects do you recall discussing with Mr. Horne, speaking of broad subjects now?

A. The effect of the settlement agreements, the plight of the organization, what it would take to end its legal troubles.

Q. Anything else?

A. That's, basically, it.

Q. When you say "the effect of the settlement agreements," you are talking about agreements other than just yours?

A. Mine and others of that ilk, so both on a personal and theoretical and real level.

Q. And you are talking here about other settlement agreements that included nondisclosure agreements; is that right?

A. What was your question again?

Q. When you say "others of that ilk," you are discussing other settlement agreements that included nondisclosure provisions; is that correct?

A. Specific to the organization, yes.

Q. Did you discuss your own litigation with CSI with Mr. Horne?

A. I believe it was discussed in some form, the specifics about which I do not know.

Q. You don't know, or you don't recall?

A. I fail to see a difference in that sentence or context.

Q. Well, if you don't know something was discussed, you could not know it by never having been there or it never having come up.

A. But you know that I was there, and I said it had come up. So we've eliminated those two from the definition, at least, the distinction between "know" and "recall" in that sentence.

In any case, if it would speed things: I do not recall.

Q. Did you discuss with Mr. Horne any of your experiences that you had had with any Church of Scientology or with Mr. Hubbard prior to 1986?

A. I only met him in 1992.

Q. Right.

Did you discuss with him any experiences you had had with the Church of Scientology or Mr. Hubbard, and dating those experiences back to before 1986?

A. I have no recollection of any specific experience being discussed.

Q. Might have; might not have; you just don't recall?

MR. GREENE: Objection.

You can answer the question.

THE WITNESS: Yes.

MS. BARTILSON: Q. But you discussed the settlement agreements with him; is that right?

A. That is one of the things which I recall at this time.

Q. Did you give him a copy of your settlement agreement?

A. I don't believe so.

Q. Did you give him any documents?

A. I may have.

Q. Do you recall, as you sit here today, any documents that you know you gave to him?

A. No.

Q. Did your lawyer give him any documents?

A. I don't know.

Q. If you had given Mr. Horne any documents, is there anywhere you might have made note of that or kept a record of it in some way?

A. There could be.

Q. Where would that be?

A. I don't know.

Q. You might have made such a note, but you don't know where that note would be?

MR. GREENE: Okay. Enough. Speculation.

Don't answer any more of these "if you"-type questions.

MS. BARTILSON: Well, I'm trying to find out if there's anything in existence that could refresh the witness's recollection, and I think I'm entitled to that.

MR. GREENE: Then ask him. No more speculative questions.

Don't answer the "if," speculative, questions.

MS. BARTILSON: Q. When you gave documents to reporters or other members of the media, Mr. Armstrong, has it been your custom and practice to make notes of that fact?

MR. GREENE: No foundation.

Don't answer the question.

MS. BARTILSON: Don't answer the question because no foundation?

MR. GREENE: Right. No foundation for it -- I'm sorry.

It assumes a fact not in evidence, which is a similar objection. I will add that.

Absolutely no foundation of Mr. Armstrong giving documents to reporters, the foundation of Mr. -- of Mr. Armstrong providing an interview.

MS. BARTILSON: Mr. Greene, you told me I wasn't supposed to talk about things that had already been discussed in other depositions, and he already testified about giving documents to reporters in other depositions.

MR. GREENE: Great. Then bring it up and put it in front of him.

MS. BARTILSON: I thought you didn't want me to discuss that again. Why should we do it twice? It's pointless. The foundation has been laid in previous depositions.

MR. GREENE: Not in this case. Sorry you are confused, Counsel.

MS. BARTILSON: Q. Have you ever given documents to any reporters or other representatives of the media, Mr. Armstrong?

A. Yes.

Q. Have you done that on more than one occasion?

A. Yes.

Q. Approximately how many times would you say you've done that?

A. Seventeen.

Q. Is that an approximate figure, or is that an exact figure?

A. It depends on your viewpoint.

Q. As you sit here today, you can independently recall 17 times when you gave documents to representatives of the media; is that right?

A. No, that mischaracterizes my testimony.

Q. Okay.

A. Approximately 17, the specifics of which are another matter.

Q. Have you kept notes or records concerning any of those approximately 17 times when you gave documents to representatives of the media?

A. Some.

Q. On those 17 occasions, or approximately 17 occasions, when you have given documents to representatives of the media, have the documents concerned in any way the Church of Scientology International or any related entity or individual?

A. Yes.

Q. On all of the occasions that we're discussing or just some of them?

A. Some.

Q. Of the 17, how many?

A. Eleven.

Q. Looking only at those 11 times when you gave documents to representatives of the media, did you make notes concerning the documents that you were giving away?

A. I have no recollection of making a note.

Q. On any of those occasions?

A. Right.

Q. Getting back to your interview with Mr. Horne: Did you discuss the Breckenridge opinion with him?

A. As long as it is understood by my answer that I am willing to discuss the Breckenridge opinion with anyone at any time: I have no recollection of so doing with Mr. Horne.

MR. GREENE: Bonus answer.

MS. BARTILSON: Q. So you probably did, but you don't recall?

MR. GREENE: Don't answer the question. Calls for speculation. You've already answered it; it is asked and answered also.

MS. BARTILSON: Q. Do you recall any other -- Forget that.

You said that you discussed with Mr. Horne the effect of the settlement agreement.

Do you recall specifically anything you said to Mr. Horne concerning that?

A. Not specifically.

Q. Do you recall in general anything that you said to Mr. Horne concerning that?

A. Generally, that they obstruct justice, that they are illegal, that I have a right to speak out against them, to divulge the contents, which I see as an obstruction of justice and illegal, and that I have a right to correct the injustices wrought by those rotten agreements.

Q. Good pun, Gerry.

And you also said that you discussed with him what it would take to end the organization's legal troubles.

Can you recall anything specific that you discussed with him concerning that?

CERTIFICATE OF REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of California, hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of said witness was reported by me, a Certified Shorthand Reporter and disinterested person, and was thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same.

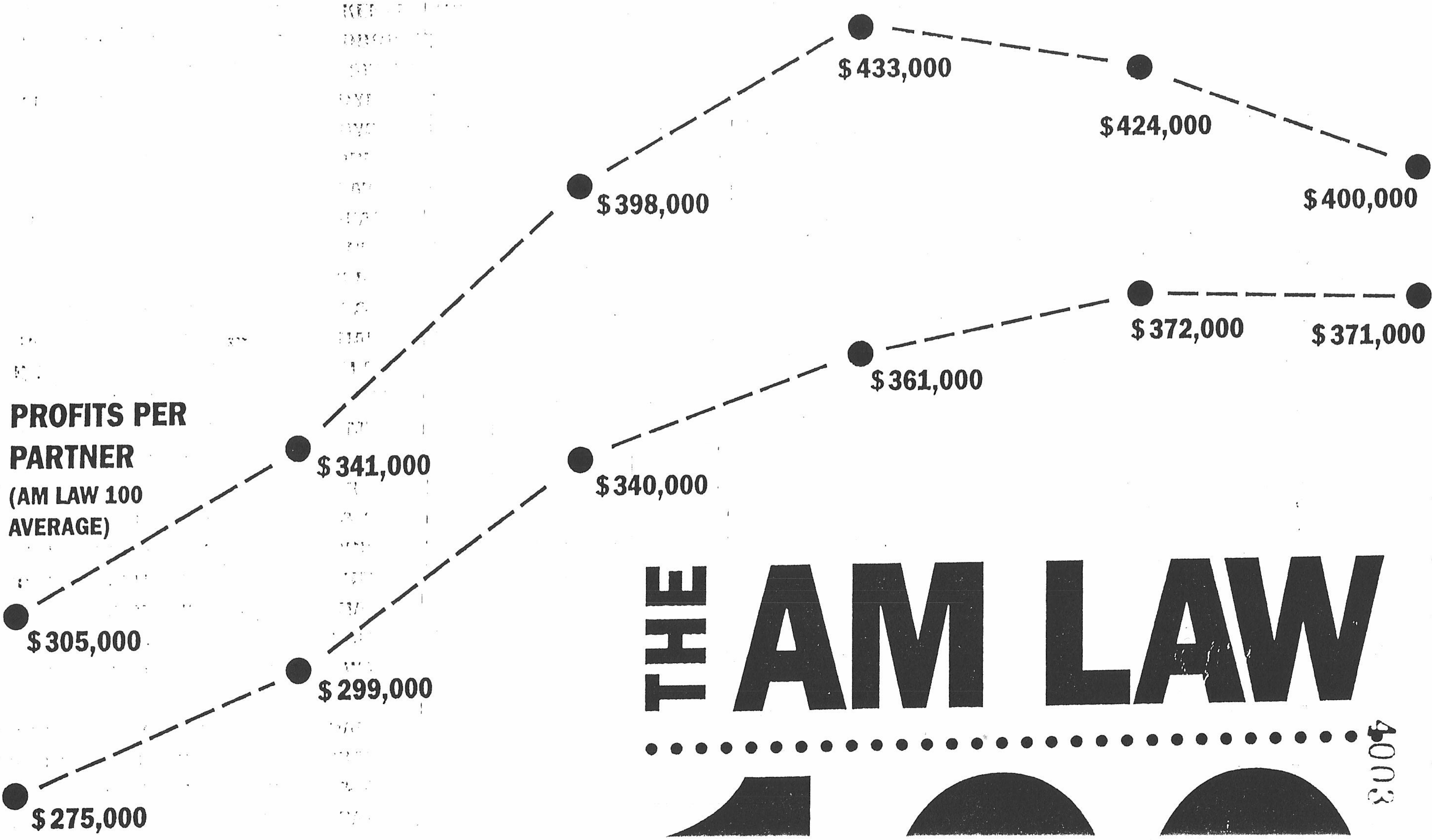
I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said action.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my signature this _____ day of _______, 19____

OCT 2 3 1992

CERTIFIED SHORTHAND REPORTER
STATE OF CALIFORNIA

E AMERICAN LAWYER



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The TWO Faces of SCIENTOLOGY

The old guard: Combative Boston litigator Earle Cooley

The new guard: Gerald Feffer of Williams & Connolly

The Church of Scientology uses private detectives and bulldog litigators to pursue its numerous detractors. It also hires low-key establishment lawyers who work quietly within the system. So who is directing the $416 million libel suit against *Time*?

By William W. Horne

On April 27, 1992, lawyers for the Church of Scientology International filed a $416 million libel action in federal court in New York against Time Warner, Inc.,* Time Inc. Magazine Company, and writer Richard Behar for Behar's scathing portrayal of the church in *Time* magazine's May 6, 1991, cover story, "Scientology: The Cult of Greed." Behar characterized the church as a "hugely profitable global racket" that has "shielded itself exquisitely behind the First Amendment as well as a battery of high-priced criminal lawyers and shady private detectives."

For those who have read Behar's piece and know something of Scientology's litigious history, the suit, filed a week before the statute of limitations for a libel action tolled, does not come as a surprise. After all, in the preceding year church entities had filed defamation actions in the U.S. against five of Behar's sources and sued Behar—and *Reader's Digest*, which excerpted and reprinted the article last fall—for defamation in Paris. (The Paris suit was dismissed in April.)

In fact, the church has a reputation for hiring bulldog lawyers like Earle Cooley, the gravelly voiced name partner of Boston's 18-lawyer Cooley, Manion, Moore & Jones (and a Scientologist himself), to bring suits against, and defend suits filed by, the church's numerous detractors—most of them former members. The lawyers also regularly sue the federal government: The church today has approximately 100 suits pending against the Internal Revenue Service alone, according to Justice Department spokesperson Melissa Burns.

These lawyers have tended to pursue cases with a zealousness that hearkens back to the church's paranoid past, a past that includes, among other things, the conviction of 11 of its leaders, nine in 1979 and two in 1980, for burglarizing the offices of the IRS, the Justice Department, and other government agencies. Church opponents ascribe such zealousness to Scientology's most damning legacy—"fair game," a doctrine written by church founder L. Ron Hubbard in October 1967 (and supposedly rescinded a year later) that specified that Scientologists can use any means necessary to destroy enemies of the church [see sidebar, "What Is Scientology?" page 76].

In particular, Los Angeles's 14-lawyer Bowles & Moxon, which does more of the church's work than any other law firm and acts as Scientology's de facto in-house department, now seems to apply a sort of restrained fair game both inside and outside the legal arena. For instance, the firm—where all four partners are themselves Scientologists—uses detectives to investigate, thoroughly and sometimes intrusively, "anyone the church has a bone to pick with," according to one detective who has done a substantial amount of work for the church.

This is the face the public is most familiar with, that of a church ready to sue at the drop of a hat, and to use the legal system to harass opponents into submission or silence.

But there is another side, another face, to Scientology's legal machinations. At least one claim in the *Time* suit, for example, does raise a serious question about the accuracy and use of an important fact cited by *Time*. Behar's premise that the church is a "hugely profitable" business seems to be based in large part on one piece of financial data: that "in a

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**Time Warner is a partner in American Lawyer Media, L.P.*

of us is a spiritual being whom Hubbard called a "Thetan," who is basically good and is perpetuated through the millennia. But in each incarnation we are handicapped by the existence in us of "engrams"—spiritual pain or upset. Those engrams have to be erased or "cleared" by a process Hubbard developed called "auditing."

Auditing is a form of spiritual counseling in which the subject of the counseling answers exact questions posed by another Scientologist (the auditor) while holding on to an "E-meter"—an electrical device courts have referred to as a "crude lie detector" but that Rinder says measures mental energy. Auditors use the "E-meter" to locate and rid Scientologists of engrams.

Until the engrams are removed, the Thetan cannot operate optimally, and the Scientologist is known as a "pre-clear." After they are removed the Scientologist is "clear" and becomes an "Operating Thetan." As he progresses, he achieves "case gain"—physical and spiritual improvement—and moves "up the Bridge of Freedom." Operating Thetans progress through eight stages, from OT1 to OT8, to achieve the full rehabilitation of their a[illegible]3,200 for members. (Joining the I, [illegible] which is open to S[illegible] non-Scientologists alike[illegible] a one-year membership[illegible] lifetime membership.) [illegible] can be reduced and in some cases eliminated if one becomes a staff member or otherwise becomes more actively involved—for instance, by becoming an auditor.

Still, the relatively high donations charged for church services are at the crux of many of the church's disputes with the IRS and others who ask: Is Scientology a business, or is it a religion? Courts have ruled both ways.

In 1989, for example, the U.S. Supreme Court ruled in a 5-to-2 decision that the fixed donations could not be declared as charitable contributions. But church lawyers argued persuasively that these donations are no different than "pew rents" charged by the Catholic church or the tithing required of Mormons, both of which are tax-deductible. The church won a strong dissent from Justices Antonin Scalia and Sandra Day O'Connor, who found the donations "indistinguishable" from payments made by other religions.

(Behar stands by his figure. "The [court] filing . . . plainly and clearly shows income of five hundred three million dollars flowing into CST during that year," he says. Citing the ongoing litigation, he declines to comment on whether he saw the $4 million tax filing in the court records but notes that, given the refusal of CST to cooperate with the IRS in the past, "I don't think the 1987 [tax form] can or should be taken at face value.")

Scientology's longtime libel counsel, Jonathan Lubell of New York's Morrison Cohen Singer & Weinstein, who filed the *Time* suit, says such an action is unusual for the church—and, in this instance, entirely warranted. "The church hadn't sued any media organization in the U.S. for libel for over ten years" prior to the spate of suits that followed Behar's article, he says.

Lubell is just one of a stable of reputable lawyers the church has hired over the last decade, who range from Yingling to criminal tax expert Gerald Feffer of D.C's 133-lawyer Williams & Connolly (Yingling's husband) to the church's general counsel, William Drescher, a former partner of L.A.'s now-defunct Wyman, Bautzer, Kuchel & Silbert.

These lawyers give credence to church leaders' assertions that while a small group of Scientologists ran amok in the 1970s, the church has since cleaned house. The leaders say the allegations of brainwashing, harassment, and other "fair game" tactics that civil plaintiffs cite today in tort claims for intentional infliction of emotional distress—and the similar allegations in Behar's article—are baseless attacks on First Amendment protected religious practices.

The question is, with such lawyers as Cooley and Bowles & Moxon on one side, and Feffer and Lubell on the other, which is the real face of Scientology?

AM I BEING FOLLOWED?

Sitting in a small café in San Anselmo, California, Gerry Armstrong, 45, draws looks from the sundry weekend diners—bicyclists, hikers, and San Francisco day-trippers—who pop in for a sparkling water and an avocado sandwich. A tiny, fit man in a black T-shirt and jeans, he has lustrous belt-length chestnut hair with a matching beard and mustache that gives him a Christ-like appearance. He is the founder of his own church, which he says has no name. But he is also a former Scientologist who has himself launched or helped others launch more than a dozen legal attacks against the church since leaving in late 1981.

"I've said all they need to do is settle publicly and honestly and repudiate 'fair game,' " he says, his bushy eyebrows knit together in concentration.

In 1986, according to both Armstrong and papers recently filed in federal district court, Armstrong received an $800,000 settlement from the church in a suit charging that he had been harassed and had suffered emotional distress. He currently is fighting a suit by the church that seeks to compel him to abide by the settlement provisions, which require him to refrain from abetting any suits against the church or discussing either the terms of the settlement or the church itself with other than family members. (He now works as a paralegal for San Anselmo-based solo practitioner Ford Greene, who has represented approximately ten plaintiffs against the church.) As Armstrong leaves the café, he points out a middle-aged man across the street holding a camera. "That's one of them," he says excitedly as we walk away. "Watch this."

Sure enough, just before we round a corner, the man swings his camera in our direction. When Armstrong trots back and confronts him, the man appears befuddled, denying he is a detective and explaining that he is taking pictures for a photography class. Armstrong isn't convinced. "I'm sure he works for the organization," Armstrong later says (refusing, as he always does, to call Scientology a church).

The photographer may have been innocent (Armstrong is, after all, an intriguing photography subject); he may have been an investigator. But what is certain is that Armstrong's fears are symptomatic of the paranoia displayed on all sides by most of the 65 lawyers, judges, and litigants interviewed for this article. While opposing counsel and litigants see Scientology behind every untoward occurrence in their lives, from near misses on the freeway to hangup phone calls, church leaders and their lawyers tie every criticism and legal attack into a massive conspiracy supposedly aimed at toppling the church.

The evidence on both sides is often as inconclusive as Armstrong's charges against the photographer. Still, when it comes to the legal arena, Scientologists often end up on the losing end.

"In addition to violating and abusing its own members' civil rights, the organization over the years with its 'fair game' doctrine has harassed and abused those persons not in the church whom it perceives as enemies," wrote Los Angeles County Superior Court judge Paul Breckenridge, Jr., in a June 1984 ruling in Gerry Armstrong's first case, where a church suit against him seeking return of church-related doc-

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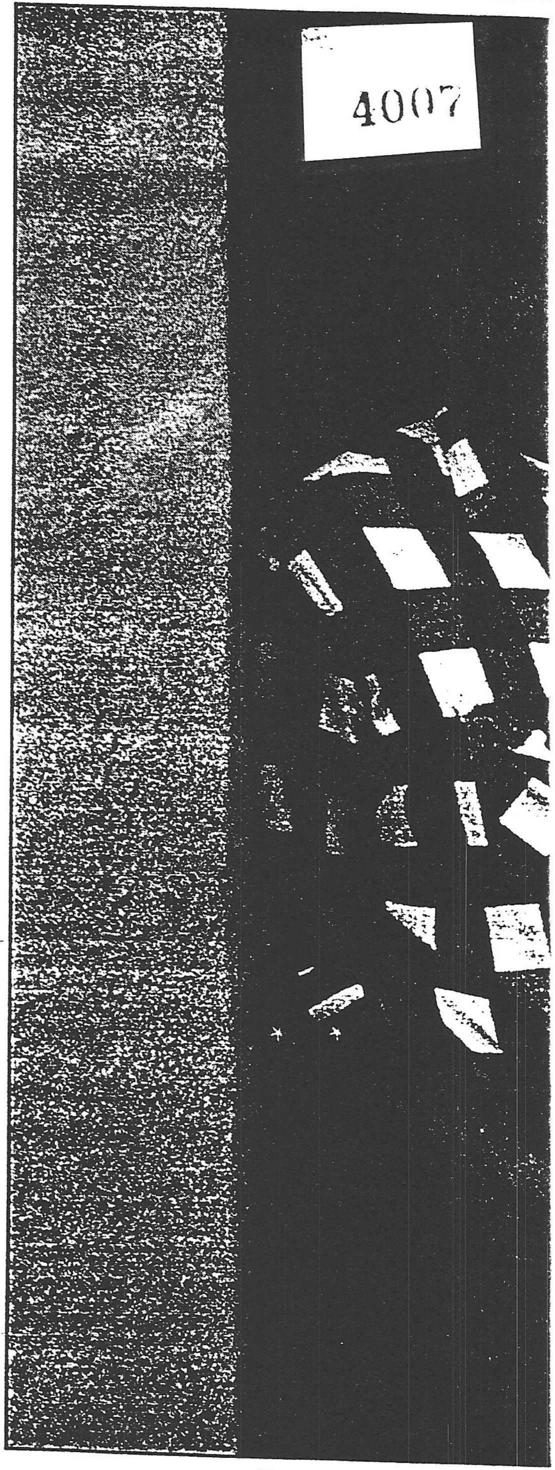
uments backfired. After gratuitously labeling the church leaders "schizophrenic and paranoid," Breckenridge concluded that Armstrong, who had obtained the documents after he left the church in December 1981 as what he called a hedge against retaliatory action by the church for leaving, had been followed and surveilled by individuals working for the church who had also assaulted him, trespassed on his property, spied in his windows, created disturbances, and upset his neighbors. The judge upheld Armstrong's justification defense, dismissed the church's charges, and awarded judgment and costs to Armstrong.

Breckenridge's ruling pumped new life into a host of other civil suits against the church that followed on the heels of the convictions in 1979 and 1980 of the 11 church leaders for infiltrating federal offices. Civil complaints were based upon church materials the FBI had seized—and that were entered into the record in the criminal prosecution—that indicated a pattern of harassment and covert operations by the church's intelligence unit, the Guardian's Office, against its enemies, many of them former church members.

Plaintiffs charges in the nearly three dozen suits ranged from unlawful imprisonment to negligence. Several attacked the church practice of "auditing"—a kind of one-on-one confessional made by a Scientologist in response to questions from another church member while being monitored by an "E-meter," a sort of modified lie detector—as intentional infliction of emotional distress.

Many early church lawyers—primarily civil liberties lawyers, including the late First Amendment star Leonard Boudin—defended the civil suits on religious freedom grounds. But some of these civil libertarians and other lawyers (such as the late L.A. solo practitioner John Peterson, the church's first de facto general counsel) pursued more questionable tactics: flooding dockets with motions, suing those who had sued the church in multiple jurisdictions, and even suing the plaintiffs' lawyers. Boston personal injury lawyer Michael Flynn, for example, who at one time represented more than two dozen plaintiffs against the church, was sued by the church more than a dozen times in four jurisdictions for everything from contempt of court to defamation. All the suits were eventually dropped or dismissed. (Flynn declined comment pursuant to the terms of a settlement he received from the church in 1986.)

In addition, the church wrote nine letters of complaint to the Massachusetts Board of Bar Overseers about Flynn alleging unethical conduct—one complaint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Former Scientologist Ge
San Anselmo, California,

yer by Cooley, who says he "assumes" it became operative. Regardless, according to a spokesperson for the Massachusetts Board of Bar Overseers, Flynn has never been the subject of a disciplinary action.

Plaintiffs lawyer Charles O'Reilly claims he became a target for retaliation after he won a $30 million jury verdict against the church on behalf of former Scientologist Larry Wollersheim in 1986 in California superior court. (The verdict was reduced to $2.5

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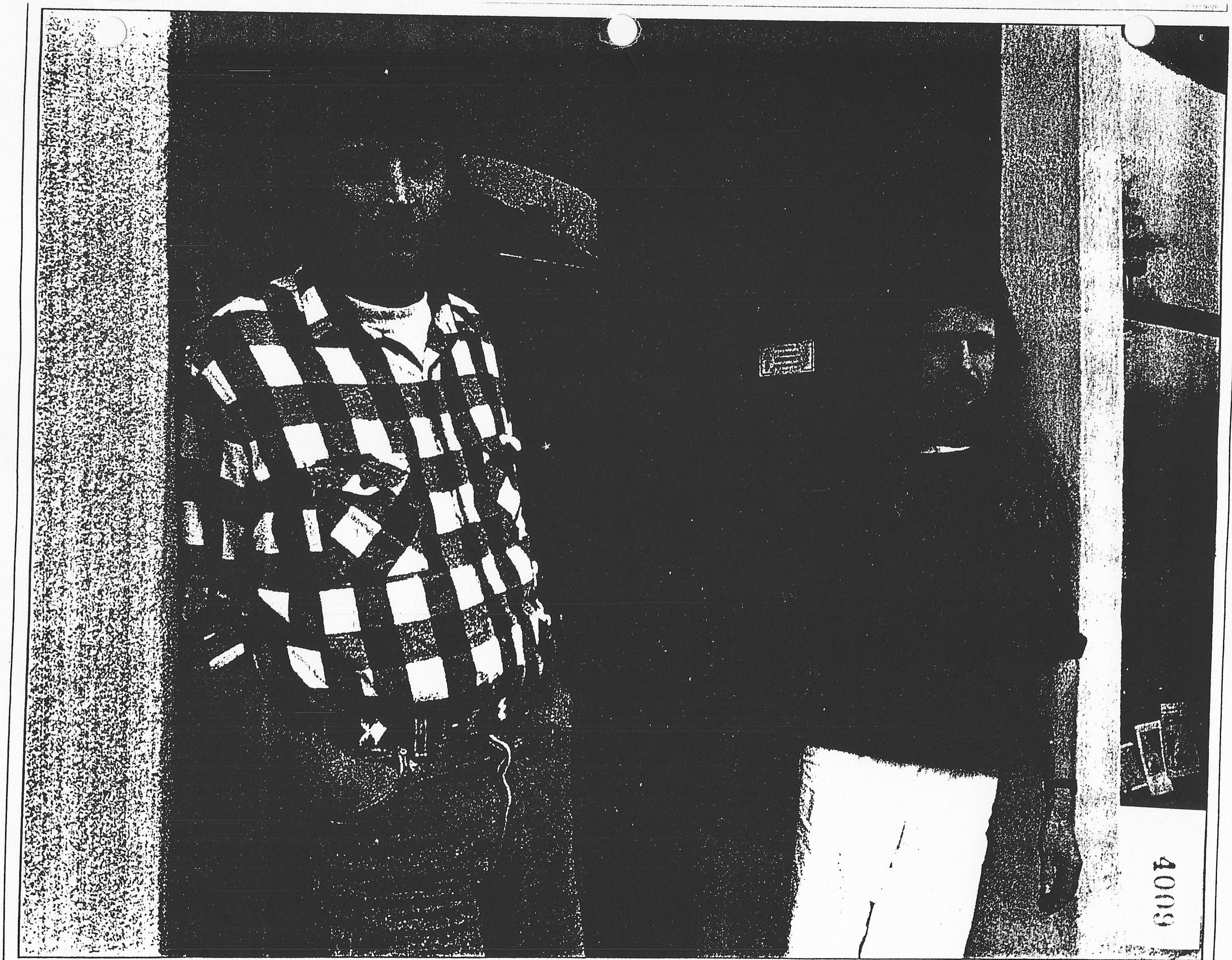
"They [should] settle publicly and honestly and repudiate 'fair game,' " says Armstrong.

California superior court judge Ronald Swearinger, who presided over the *Wollersheim* trial, describes the case itself as anything but normal: Church trial lawyer Cooley and his co-counsel, the late John Peterson, filed a number of unsuccessful "writs and motions" throughout the trial in an attempt to halt it, according to Judge Swearinger. Three days into the trial, the judge says, they moved for his disqualification, based on "some secret conversation I'd had with someone I'd never heard of." They also filed a Section 1983 federal civil rights action against both him and the judge who sat on the case prior to him, says Swearinger, on the theory that by allowing the case to go to trial, the judges were denying the church its civil rights. (Cooley confirms that the Section 1983 action and the disqualification motion were filed.)

But Swearinger's recollections of the oddities of the *Wollersheim* case go beyond court filings: "I was followed [at various times] throughout the trial . . . and during the motions for a new trial," the judge claims. "All kinds of things were done to intimidate me, and there were a number of unusual occurrences during that trial. My car tires were slashed. My collie drowned in my pool. But there was nothing overtly threatening, and I didn't pay attention to the funny stuff."

Church official Kurt Weiland strenuously denies Swearinger's assertions: "The allegations that the church had

PHOTOGRAPH BY ED KASHI



Former Scientologist Gerry Armstrong (right), who has played a part in more than a dozen suits against the church, with San Anselmo, California, solo practitioner Ford Greene, who has represented approximately ten plaintiffs against the church

L. RON HUBBARD

Messiah or Madman?

by Bent Corydon
and L. Ron Hubbard, Jr.

Lyle Stuart Inc. Secaucus, New Jersey

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FILED 4012
JAN 13 1995
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MARIN COUNTY CLERK
by M. Louten, Deputy
M. Louten

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. **157 680**

ARMSTRONG'S EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION

Date: 1/27/95
Time: 9:00 a.m.
Dept: One
Trial Date: May 18, 1995

VOLUME TWO

VOLUME TWO

Exhibit 2	Declaration of Ford Greene
Exhibit 2 (A)	Excerpts from transcript of proceeding before Honorable Ronald M. Sohigian, May 26, 1992.
Exhibit 2 (B)	Excerpts from transcript of deposition of Lynn Farny taken July 27, 1994.
Exhibit 2 (C)	Release signed by Vicki Aznaran in favor of Scientology providing for liquidated damages in the amount of $10,000.
Exhibit 2 (D)	Release signed by Richard Aznaran in favor of Scientology providing for liquidated damages in the amount of $10,000.

DATED: January 13, 1995

HUB LAW OFFICES

By:____________________
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Attorney for Defendants
GERALD ARMSTRONG and THE
GERALD ARMSTRONG CORP.

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GERALD ARMSTRONG and THE
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

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vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive,

Defendants.

No. **157 680**

DECLARATION OF FORD GREENE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION

Date: 1/27/95
Time: 9:00 a.m.
Dept: One
Trial Date: May 18, 1995

I, Ford Greene, declare:

1. I am the attorney for defendant Gerald Armstrong herein.

2. From February 1989 through approximately May 1991 and then from July 1991 through May 1994 I was plaintiffs counsel for Vicki and Richard Aznaran in litigation entitled Aznaran v. Church of Scientology of California, U.S. District Court, Central District of California, CV-881786 JMI(Ex). At no time did I ever suggest or in any way pressure either of the Aznarans, or both of them, to provide a monthly stipend or any other kind of payment to

Gerald Armstrong or to me for Mr. Armstrong's services.

3. On March 20, 1992, I appeared on Mr. Armstrong's behalf before the Honorable Michael B. Dufficy of the Marin County Superior Court. Also present at said hearing were Scientology counsel Andrew Wilson, Michael Hertzberg and Laurie Bartilson. At the hearing Judge Dufficy advised us in open court that Cable News Network (CNN) had submitted a requested to tape and televise the proceeding about to commence and asked all counsel whether there was any objection thereto. No counsel for plaintiff or defendant objected.

4. After the hearing concluded, I personally observed Don Knapp, the reporter for CNN, conduct interviews of Scientology counsel Wilson and Hertzberg. Thereafter, the reporter and his support crew interviewed Mr. Armstrong and me at my office regarding the instant litigation.

5. I was present during the proceeding that were held before the Honorable Ronald M. Sohigian on May 26, 1992. Attached hereto as Exhibit A are true and correct copies of excerpts of said proceeding.

6. Attached hereto as Exhibit B is a true and correct copy of excerpts of the deposition of Lynn Farny, secretary for plaintiff, taken on July 27, 1994.

7. During the course of my representations of the Aznarans in their litigation against Scientology, I became familiar with release that each of them signed. A true and correct copy of the release which Vicki Aznaran signed is attached hereto as Exhibit C. A true and correct copy of the release which Richard Aznaran signed is attached hereto as Exhibit D. Each release was

substantially similar to that at issue in the instant litigation. Each said release provided for liquidated damages in the amount of $10,000 per violation.

Under penalty of perjury and pursuant to the laws of the State of California, I hereby declare the foregoing to be true and correct. Executed on January 13, 1995 at San Anselmo, California.

FORD GREENE

COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COPY

CHURCH OF SCIENTOLOGY, INTERNATIONAL, etc.,
Plaintiff,
vs.
GERALD ARMSTRONG, et al.,
Defendant.

Superior Court
Case No. BC 052-395

Los Angeles, California
May 26, 1992
10:05 a.m.

APPEAL FROM TEH SUPERIOR COURT OF LOS ANGELES COUNTY

THE HONORABLE RONALD M. SOHIGIAN, PRESIDING
DEPARTMENT 88

TRANSCRIPT ON APPEAL

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COURT RECORDER:
J. W. CRUSE

TRANSCRIPTION BY:
PARRIS TRANSCRIPTS
P.O. Box 41754
Los Angeles, Ca 90041-9998
(213) 254-4157

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

engage in a so-called sting operation against Armstrong, which Scientology claims was in fact sanctioned by the Los Angeles County Police Department.

THE COURT: Does it -- does that declaration precisely track the language contained in paragraph No. 9?

MR. GREENE: No. It doesn't. It -- it --

THE COURT: So you want me to go with the content of the Farny declaration rather than with the content of the Armstrong declaration, to the extent that the content of the Armstrong declaration exceeds or is different from the content of the Farny declaration?

MR. GREENE: If I understand you correctly, Judge, I don't -- in my own words, I don't want you to rely only on the Farny declaration and throw out what Armstrong says to counter-balance it, but if you look at them both with respect to -- as to one another, that's fine.

THE COURT: The objection is sustained for the material in the Armstrong declaration that is objected to; it is not premised on an adequate foundation. Go ahead.

MR. WILSON: The next objection is to -- it begins on Page 8, Line 18. It is to Paragraphs 13, 14, 15 and 16, in their entirety, on the grounds that they constitute hearsay statements made by Mr. Armstrong's attorney, Mr. Flynn.

THE COURT: Counsel for defendant?

MR. GREENE: Goes to Armstrong's state of mind in entering into the agreement which is at issue here.

THE COURT: All purported statements made by Flynn to Armstrong and by Armstrong to Flynn contained in the objected-to paragraphs are stricken; that is, the objections to those materials are sustained. Go ahead.

MR. WILSON: Thank you, Your Honor. Paragraph -- on Page 12, Paragraph 19 continues; as the first sentence, it says: "The organization continued its fair-game campaign against me," et cetera. Against the -- against me in violation of the spirit and letter of the settlement agreement. Lack of adequate personal knowledge, foundation, and also it's a legal conclusion as to whether it's in violation of the letter of the agreement.

MR. GREENE: Would you repeat your objections then, please.

THE COURT: Page 12, Lines 5 through -- to 7, beginning with the words, "Following the December 1986" and ending with the words "Letter of this settlement agreement."

MR. GREENE: Okay.

MR. WILSON: And the objection is, no adequate foundation of personal knowledge and it's a legal conclusion.

MR. GREENE: As to no foundation, I think the foundation is set forth hereafter in Paragraph 20 --

THE COURT: In other words, nothing -- that sentence does not refer to anything except what is in the remainder of Paragraph 19 and Paragraph 20, correct?

MR. GREENE: Twenty -- in addition, Your Honor, Paragraphs 21, 22, 23 --

THE COURT: So that sentence does not refer to anything except what's contained in the remainder of Paragraphs 19 and then Paragraphs 20 to 23, correct?

consequence of the agreement at issue here. For those reasons, each one of those declarations are relevant.

THE COURT: What are you talking about, the public record?

MR. GREENE: That those various declarations were filed in litigation that Mr. Flynn, as attorney for people who were suing Scientology in various different litigations. All of those declarations discuss --

THE COURT: The objections are overruled.

MR. WILSON: Thank you, Your Honor. The next, the declarations of Mr. Flynn -- 46, 47, 48 -- on the same basis. And also on the basis, Your Honor, that -- and I did not proffer this evidence; I will if necessary -- that we attempted to take the declaration of -- the deposition of Mr. Flynn twice by giving notice to defendants, tried to have them stipulate to it; they refused.

That's all described in Ms. Bartilson's declaration, and defendants successfully have prevented that by the filing of a motion to quash. The grounds for that motion to quash is that proper notice wasn't given in terms of the number of days, and the date that notice was given was the day of the riots, which is why personal service could not be made. And on that basis as well, we believe that they should be estopped from asserting those -- from offering those declarations.

THE COURT: Why? You want to take his deposition to do what; contradict the material contained in the declarations?

MR. WILSON: Those declarations, and also the statements that Mr. Armstrong made in his declaration that was submitted as to what Mr. Flynn told him and the fact that he--

THE COURT: But I've excluded that material. I don't care what somebody says his lawyer told him.

MR. WILSON: Well, in that case --

THE COURT: You want to object to the Flynn declarations, or don't you?

MR. WILSON: Yes, on the basis of relevance.

MR. GREENE: The reason that they're relevant, Your Honor, is because they -- the Flynn declarations --

THE COURT: You'd better get them for me, Ms. Cervantes. Declarations of Michael J. Flynn, filed in support of the amicus brief of Yanny in Marin County, September 21, 1983; is that right? Or 1988?

MR. GREENE: 1983 is the first declaration.

THE COURT: All right. Where would that be?

MR. GREENE: That would have been filed March 16, '92 -- or 16, '92, in Marin County. And that's a separate bundle.

THE COURT: Irrespective of how I rule -- while Ms. Cervantes is getting this material -- irrespective of how I rule, when would you be ready to try this case, assuming that it survives all the attacks on it?

MR. WILSON: Probably six to nine months or for --

THE COURT: To whom is it assigned in the I.C. system?

MR. WILSON: Judge Horowitz.

THE COURT: Who?

MS. BARTILSON: Judge Horowitz.

MR. WILSON: Perhaps sooner than that, Your Honor. We haven't been successful in getting anybody's deposition yet.

THE COURT: Whose deposition do you want to take besides Armstrong?

MR. WILSON: Well, we've noticed Mr. Armstrong's deposition three times.

THE COURT: And?

MR. WILSON: Hasn't shown up at all. And if you'd like me to give you the letters --

THE COURT: Not interested at all. You just do whatever you need to do to litigate your case.

(Pause)

THE COURT: Can you describe the thing that the objection is being made to more fully, Counsel, so that --

MR. WILSON: Yes, Your Honor.

THE COURT: -- there's no doubt about exactly what documents you're trying to attack?

MR. WILSON: It's -- I just had them in front of me a minute ago, Your Honor, I'm sorry. Declarations of Michael J. Flynn as filed in support of amicus curiae brief of Joseph A. Yanny in opposition to plaintiff's order to show cause re preliminary injunction, Marin County action. And there's three of them. They're --

THE COURT: Are they all under the same cover sheet?

MR. WILSON: Yeah, I think they are. A, B, and C.

MR. GREENE: Yes, they are.

(Pause)

THE COURT: Thank you. Go ahead. Tell me what your objections are.

MR. WILSON: Relevance. They're well before the time period at issue here, and unlike arguing Mr. Armstrong's declaration, they don't go to show what Mr. Armstrong knew except through hearsay of Mr. Flynn or anything that I can conceivably see is relevant to this action.

THE COURT: Counsel for defendant?

MR. GREENE: The reason -- first of all, the first one is a declaration that was filed in Armstrong I; it was part of the record there. Two --

THE COURT: So what? The question is whether it's relevant in this case.

MR. GREENE: Okay. The reason so what is because the declarations describe the extraordinary --

THE COURT: Where? Just tell me page and line rather than characterizing them or putting your gloss on them. Just say what language in it you think it pertinent to some issue in this case that I'm going to have to adjudicate.

MR. GREENE: Yes, Your Honor. The entirety of the affidavit in Armstrong I, describing what Flynn --

THE COURT: Where? What page and line? You mean that he's a Massachusetts lawyer, and that he works in Massachusetts and that he makes this affidavit to assist the Court in understanding, quote, "the general and specific contexts of Scientology's purpose and intent in bringing this latest harassive legal proceeding against me and specifically in support of my opposition to this latest contempt charge", end quote? You mean that's going to be pertinent in the case, and--

MR. GREENE: Yes.

THE COURT: Oh, really? How?

MR. GREENE: Because it goes to the issue of unclean hands, and it goes to the issue of what the context -- factual context of the settlement agreement is.

THE COURT: Do you mean the argumentative assertion made by this declarant on the 21st of September, 1983, pertains to the unclean hands of any party in this case, pertinent to this motion?

MR. GREENE: The factual elucidation following that, yes. If you were to look at that --

THE COURT: I'll strike all three declarations on the grounds of relevancy and on the grounds of evidence code 352. The declarations are so prolix and so laced with argumentative and conclusory material as to require -- and material which very, very substantially predates the pertinent details of the instant case as to require both the undue consumption of time and the creation of substantial danger of undue prejudice and confusion of the issues, and misleading the fact-finder. Go right ahead, Counsel for plaintiff.

MR. WILSON: Thank you, Your Honor. Next is 49, which is Declaration of Vickie Aznaran of 9 August of '88. That's Exhibit I-A. On the basis of relevance. It's a declaration of Vickie Aznaran; it doesn't mention Gerald Armstrong and has nothing to do with him.

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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Sharon Osborn
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9-30-92
DATE

4026

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

---oOo---

COPY

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION, a California for profit corporation; DOES 1 through 100, inclusive,

Defendants.

AND RELATED CROSS-ACTION.

NO. 157-680

DEPOSITION OF:

LYNN R. FARNY

Wednesday, July 27, 1994

VOLUME IV

Reported by:
SUSAN M. LYON
CSR NO. 5829

PENNY L. GILMORE & ASSOCIATES
DEPOSITION REPORTERS
P.O. BOX 862
ROSS, CALIFORNIA 94957
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A. Insofar as a corporation can have an opinion of how it feels about Mr. Armstrong's conduct insofar as the settlement, I think it's expressed in our causes of action that we've alleged seeking relief from his tortious action, well, actually, not tortious action, but his breach.

Q. Now, so according to the definition of fair game as it's given in Exhibit 16, it's really Armstrong that's engaged in fair game because you feel that he's lied to you?

A. That question makes no sense to me.

Yes, I feel he has lied to us.

Q. And you feel that he's used you; right?

MR. BOWLES: Objection, vague.

THE WITNESS: In what manner?

MR. GREENE: Q. By taking your money and telling you to go jump.

A. He's done that, certainly.

Q. And wouldn't you say that that is being abusive?

A. Yes, certainly it's abusive. Yeah.

Q. Now, before the settlement agreement you considered that such a possibility could occur, didn't you?

A. What?

Q. Prior to the settlement you considered that in the realm of possibility was the scenario that Armstrong could take the money and spend it and then not keep the terms of the agreement, that was within the spectrum of your thought, wasn't it?

A. I don't know how realistic a possibility I considered it. I attempted, and other people I was working with attempted, to guard against that possibility by making the settlement document as complete as we could.

Our anticipation was that if we arrived at an agreement, that agreement would remain in place because we had no doubts that both sides were entering into it with an honest desire to work out an agreement. But that doesn't mean that in the agreement that's worked out, you don't guard against all possibilities, even if you don't consider them necessarily realistic.

Q. Right. And even though you didn't necessarily consider the scenario that brings us here to be realistic at the time, you saw it as a possibility, didn't you?

A. It was contemplated in the settlement document out of a belt and suspenders approach.

Q. Describe what you mean.

A. A very complete document that provides for all possibilities, even though some may be remote just so as to insure there is a complete end to the hostilities.

Q. I see what you mean. So when you say belt and suspenders, what you're talking about, if I understand correctly is, that if the objective of the settlement is the functional equivalent of the pants, it's better to have both a belt and suspenders in order to keep the pants on and up; right?

A. Sort of, because -- and that doesn't presuppose that the belt is going to fail. You don't have a view in mind that the belt will fail.

Q. Right.

A. You just are making sure that that which you've bargained for, which is the pants staying up, will remain in place.

Q. Okay.

A. So that all the decisions that need to be arrived at are arrived at before the settlement agreement is signed.

It's the same way with any contract, you make sure everything is known and understood and agreed upon before you sign rather than afterwards.

Q. So then you have both belt, a belt and suspenders so that if the belt fails, you got backup by suspenders; right?

A. Well, both sides has the belt and suspenders.

Q. Okay. Now, when you were looking at the contract with Armstrong, the pants was the contract itself, right, as you said?

A. To continue the analogy, yes.

Q. Okay, to continue the analogy.

So then belt and suspenders were enforcement by injunction; right?

A. Which one do we want?

Q. I don't know. I don't know.

A. It was this --

Q. I think we --

A. -- belt and suspenders was merely a comment, okay?

MR. BOWLES: One at a time.

MR. GREENE: Q. It's a good analogy.

A. Okay, fine. But as with any analogy, you can extrapolate it to point where it becomes somewhat nonsense.

Q. I'm just trying to get the idea with you. And so in terms of the protections to keep the pants of the agreement on, there was injunctive relief; right?

A. That's among the remedies for a breach; right.

Q. Okay. Attorneys' fees and costs?

A. Yes.

Q. Liquidated damages; right?

A. Yes.

Q. Enforcement in L.A.?

A. Yes.

Q. Nothing else aside from that; right?

A. Whatever is said in the agreement.

Q. Those are the enforcements, to your knowledge, those are the enforcement provisions of the agreement that you bargained for and negotiated to be able to protect yourself in case the pants started to come off; right?

A. Those are among them, yes. We'd have to consult the settlement agreement to make sure we got all of them. I'm reciting it from memory as I sit here.

Q. So then now as you sit here today, when Armstrong now talks about the content of his experiences in a knowledge of Scientology, it doesn't do any real harm to Scientology in the larger picture, does it?

A. In the larger sense, I don't know. It depends on who he's doing the talking to, in what form. Continuing to ferment litigation is a violation of the agreement.

Q. I understand that.

A. That's right.

Q. I understand that.

A. You're asking me to give an opinion on whether a certain hypothetical activity on his part would hypothetically damage the church in any way.

We have alleged damages in the case in L.A. We have alleged damages we have sustained on the basis of his breaches. I'd be happy to talk about those.

But in the hypothetical trying to say that in the larger sense something he does doesn't damage the church, it opens too much leeway for misinterpretation and I don't think you want to do that.

Q. Certainly you wouldn't want to do that. And so my next question to you --

A. I guess not.

Q. -- is what damage did the church suffer from the quote of Gerald Armstrong's that was published in Newsweek magazine?

MR. BOWLES: Objection. We're getting into relevance here, Mr. Benz.

MR. BENZ: What? Is that claimed as one of the items of damage?

MR. GREENE: Yes.

THE WITNESS: It's claimed as one of the items which is an improper disclosure that gives rise to the liquidated damages provision.

MR. BOWLES: In the other litigation.

THE WITNESS: In the other litigation. And that liquidated damages provision was put there because of the difficulty of assessing how much exact damage is for one statement or this statement or the other statement.

MR. GREENE: Q. Okay.

A. So my answer would be given all of the factors, 50 K.

Q. And what are the factors that go into that assessment?

A. Gerry's, at that time we believed, honest whole hearted promise that if he said something like, that it would be 50 K. And excuse me if I'm wrong for having taken him at his word.

Q. I see. So what you're relying on is the representation in the contract itself that the plaintiff acknowledged that the estimate would be $50,000?

A. For that specific type of disclosure that you've mentioned.

Q. A experience/knowledge type of -- a 7-D disclosure?

A. If it's D. I believe it is D.

Q. It's D, okay.

A. Let me see.

Q. Why don't you take a look and confirm it?

A. It's D.

Q. Okay. Aside from the language in provision 7-D of the contract whereby it states, "Plaintiff acknowledges that $50,000 is a reasonable estimation of the damage," what other considerations, if any, went into arriving at that number?

Actually --

A. Go ahead.

Q. I'll withdraw that question and ask you this question instead.

The figure of $50,000, that originated from your side of the table; right?

A. It was agreed upon by both sides of the table. I don't remember which side originated the exact amount.

Q. Okay.

A. I think we originated the concept of liquidated damages.

Q. And the purpose of the concept was to make sure that the agreement had some teeth in it so that Armstrong would respect and keep the agreement; right?

A. The purpose of that clause was a recognition of how difficult it would be to prove individual items of damage on individual disclosures. And it was a formulation based upon an estimate of how much it would cost us to fix them.

Q. And when you say how much it would cost you to fix them, then you're not actually referring to damage that -- well, let me ask you, when you say how much it would cost us to fix them, is what you're referring to court costs and attorneys' fees?

A. Not necessarily.

Q. What are you referring to?

A. Although, not -- may I finish my answer? I said not necessarily, but I don't mean to necessarily exclude that.

Q. Well, what do you mean to say?

A. What I mean to say is that anything we would have to spend to fix it. You know, the concept of liquidated damages presupposes, at least, what the contract says is there's a difficulty calculating the precise damages, attorneys' fees -- perhaps in terms of attorneys' fees in consultation to fix the disclosure with the source it was given to. I mean, the receive point, not the source.

Q. You mean, for example, we'll use the KFAX where Armstrong was going to go on the radio. And there was a letter from Bartilson threatening so sue the radio station if they let Armstrong on because that would be a violation of the settlement agreement, is that what you mean by consultation with lawyers. Would that be an accurate example?

A. No, that would not be an accurate example. That would be a completely inaccurate example.

Q. And then litigation expenses would be a completely inaccurate example, as well; right?

A. I don't think that that's necessarily the case.

Q. Then what is the case?

A. What is the case is what is put in the contract exactly as it's put in the contract reflects the viewpoint of both sides of the contract, because both sides freely and voluntarily and willingly agreed to it. And a lot of the things in the contract, there's a provision for liquidated damages to avoid just the sort of word games that you're trying to play with me in terms of calculating damages.

Q. Well, the truth is is that there was no base line of damages that you could calculate; right?

A. The truth is as expressed in the settlement agreement and in that paragraph because the paragraph describes what factors go into liquidated damages, I mean, and the need for them there; that's the truth.

Q. There is no base line of damage assessment that you have arrived at which relates to a 7-D disclosure, is there, aside from what's in the actual body of the contract?

A. The amount of liquidated damages that was agreed upon to be put in that contract for these improper disclosures was based on a reasonable calculation.

Q. Okay.

A. It is a reasonable amount. It is an effort to quantify that which is difficult to quantify. It is certainly not punitive in nature. It is the classic liquidated damages.

Q. Well, I really appreciate all of your contractual construction, Mr. Farny, but I'd like to get some direct answers from you.

A. You just did.

Q. And so far you want to make comments about word games and this and that. I'm sorry, sir, you're the one playing word games here.

MR. BOWLES: Objection.

MR. BENZ: Objection is sustained.

THE WITNESS: We're taking a break.

MR. BENZ: And I'd admonish Counsel and the witness to engage in question and answer instead of personal comments.

MR. WALTON: Just from my perspective, I think that maybe that admonishment can be given -- as to waiting until we're at this level -- maybe earlier on a lot of that stuff coming from that side of the table.

(Short recess.)

MR. BENZ: Let me again repeat the admonition that we want to return to the questions and answers.

And I have made it a practice, and would prefer this, but I will change it if necessary, and that is I don't insert into the deposition until such time there is an objection and a request for a ruling, since I prefer to allow leeway for the questioner to question and the answerer to answer. But if it does appear to be getting out of line, I will step in earlier. And if you want me to step in earlier and I haven't, please ask.

MR. GREENE: Okay.

MR. BENZ: Okay.

MR. BOWLES: Mr. Greene, I would remind you that you're going to take the morning -- this morning to wrap up. And so far I haven't heard any relevant questions yet. So why don't you proceed with something that actually has something to do with the fraudulent conveyance suit.

MR. GREENE: Thank you for your suggestion, Mr. Bowles.

MR. BOWLES: Okay.

MR. GREENE: Would you read back the last question and answer?

(Record read by the reporter.)

MR. GREENE: Q. Would you describe for me, please, the reasonable calculation to which in your last answer you made reference?

MR. BOWLES: Objection. Calls for a legal conclusion and it is irrelevant to the lawsuit in which we are engaged.

I've let this witness go on for some time now back and forth with the attorney. And I think we've beaten this to death. And I think this had gone way off the track, so let's get on to a new subject.

MR. BENZ: I'll sustain the objection at this point.

MR. WALTON: May I?

MR. GREENE: No argument? I don't get to respond?

MR. BENZ: I'll give you my ruling and then you can respond.

MR. GREENE: That's fine.

MR. BENZ: See if you can change my mind. Go ahead. Mr. Greene first, then Mr. Walton.

MR. GREENE: All right. The reason that I think your ruling is wrong is that the entire basis, as you know, and in fact the basis of the fraudulent conveyance action is the claim that's asserted in L.A.

The lion's share of the claim that's asserted in L.A. in terms of monetary damages is predicated on the claimed entitlement to liquidated damages.

And in order to be able to determine the enforceability of that liquidated damages provision as reflected in the claims made in the L.A. lawsuit upon which the claim that the Marin lawsuit is based, I'm completely entitled to go into how it was that this figure was arrived at.

I mean, the principles of law are very, very clear with respect to liquidated damages. And I'm, simply based on what those principles are, inquiring of this witness what is the basis of the calculation that the liquidated damages should be $50,000 a pop. How was that arrived at.

The law is very, very clear that there's got to be some reasonable calculation, as Mr. Farny knows, those were the words that just came out of his mouth. And now that I'd asked him to explain -- and I think that it's a complete denial of Mr. Armstrong's right to obtain evidence that's relevant to defend himself in the Marin lawsuit because, as you know, the lion's share of the affirmative defenses in the Marin lawsuit are an attack on the agreement upon which the Marin lawsuit is based.

And one of those affirmative defenses is that the liquidated damages provision is not a reasonable calculation, but is a penalty. And your ruling, his answer, my question, the objection, my question -- his -- it's a denial of Armstrong's right to due process. It's a denial of Armstrong's right to obtain discovery on an issue that is so material.

And I'll add that during the first session of this witness's deposition, he admitted when Mr. Walton questioned him that just insofar as adding up the numbers of liquidated damages there was a mistake of $100,000. So when you take claims predicated on the entitlement to liquidated damages, that Scientology is saying, hey, this transaction was in -- and transfer was fraudulent and designed to gyp us and cynically deceive us out of that to which we are entitled, and they're standing on the contract, I certainly have the right to find out how that term was arrived at on the contract. And I respect any submit that your ruling is incorrect.

MR. BENZ: Mr. Walton.

MR. WALTON: It seemed to me that you partially ruled on this when I was doing my brief stint, your Honor. I was talking about -- I was trying to get some information regarding what these damages were, as you recall.

I'm not party to this Los Angeles lawsuit. However, by alleging a conspiracy, plaintiff is trying to hold me responsible for whatever the damages are that they've alleged in this other lawsuit to which I'm not a party.

So I think my explanation and your ruling last time is that I am entitled to find out what is the damage. I mean, since I'm not -- I don't have any rights in this other lawsuit, but I need to know what the damages are and how the plaintiff came up with the damages in order to be able to get some sort of defense together to protect myself from this $3.8 million claim.

All I know is there's this claim, and I don't know how they came about it. I look at the -- as we were sort of going through the complaint, and as you recall I was asking questions, sort of boring everybody, but I really need to know what the particulars are in order to be able to defend myself.

MR. BENZ: Okay, Mr. Bowles.

MR. BOWLES: Are you inclined to change your ruling?

MR. BENZ: Somewhat.

MR. BOWLES: All right.

MR. BENZ: I take advantage of this opportunity.

MR. BOWLES: Because if you weren't, I wasn't going to say anything.

MR. BENZ: No, I understand.

MR. BOWLES: Mr. Greene has gone on at great length on the liquidated damages clause already. This is a lawsuit today that involves Mr. Armstrong's fraudulent conveying assets of his own in order to go judge proof.

That issue, I haven't heard questions related to that issue related all day today.

The issue as to whether or not liquidated damages were calculated in a proper manner, or the contract down in Los Angeles was at issue in Los Angeles was worded in a proper way, or the intention behind it was proper are matters for the Los Angeles court; they're not matters for this litigation. It doesn't matter a whit how much comes out of L.A. What matters in this case is whether or not

Mr. Armstrong gave away assets without adequate exchange and for which the plaintiff, if it prevailed in Los Angeles, will have some access to satisfy a judgment.

So again, I think what Mr. Greene is doing is spinning his wheels and wasting all of our time by getting into minutia of another piece of litigation.

MR. BENZ: Submitted?

MR. WALTON: I was just going to point out one more thing and that is that the issue as to the amount of damages is certainly critical because, if it turns out that Scientology, the plaintiff, has proven $12.80 worth of damages, then certainly Mr. Armstrong's conveyances are not -- they have no relevance because he can probably come up with the $12.80.

So I think it's really crucial for us to try to find out as closely as we can what the damages are and how did the plaintiff get to this position where they're claiming $3.8 million. I submit.

MR. BOWLES: Mr. Benz, excuse me, we're already beaten this issue to death.

Mr. Farny has testified already as to what the basis for the liquidated damages was. So in addition to my prior objection, I think it's already asked and answered as well. We've already taken more than enough time in this area.

MR. GREENE: I would -- if based on what Mr. Bowles says here, I would be satisfied if what the witness says, and I'll ask the question is if there were no other factors that went into the calculation of what liquidated damages should be aside from what he said, then we can move on.

But unless he's willing to adopt what his attorney says and, you know, give us a base line so that we know what we're dealing with, then I've got to find out. And it's an affirmative defense. The issue is joined. It's in this lawsuit.

MR. BENZ: The problem I have with it is the complaint. The first two causes of action are fraudulent conveyance, which is no problem, I would be able to rule easily if the lawsuit were limited to that. However, the third cause of action, we have a conspiracy cause of action requesting $1.8 million in general damages and also requesting $3 million in punitive damages on the conspiracy count. Consequently -- and the question of whether punitive damages is --

MR. ARMSTRONG: Liquidated.

MR. BENZ: Excuse me -- liquidated damages are proper or a penalty is raised by an affirmative defense, that it's still at issue. I'm going to allow some additional questioning on that issue on how they were arrived at to the extent the witness knows.

MR. GREENE: Thank you.

Q. Mr. Farny, aside from what you have told us thus far with respect to how the $50,000 liquidated damages amount was arrived at, are there any other factors that went into that determination aside from the fact that in the agreement the reasonableness of that amount was acknowledged by plaintiff?

A. Well, as I said earlier, it was an effort to approximate what it would take to fix any, you know, any improper disclosure.

Obviously, some would take more than that amount, but it was an effort to calculate as best we could at that end of it what it would take to fix the results flowing from an improper disclosure --

Q. I understand that --

A. -- that's what I communicated as the base line.

Q. I understand that that was the intention. What I'm trying to find out from you is what is the $50,000 in proportion to?

A. It was in proportion to what it would take, what it would cost us to fix.

Q. And I'm asking you how did you determine the cost that would be incurred to do --

A. Well, it was --

Q. -- such a fix?

A. It was an estimate of staff time, attorney time, any other actual expenses that might go into it. I mean, it was an effort to quantify what it would take.

Q. Staff time --

A. Recognizing that it would be difficult to do.

Q. Staff time to do what?

A. To fix whatever resulted from the improper disclosure, whatever that would have been.

I mean, I think you're seeing the line of reasoning that both sides engaged upon, at least insofar as Gerry's lawyer in arriving at an agreement that liquidated damages would be appropriate.

It was an effort to estimate what it would take to fix an improper disclosure in terms of correcting the information at the receipt point and the other factors I discussed.

Q. Let me ask you this. You're familiar with the, I believe it was May 6th, 1991 Time magazine article entitled "Scientology, the Cult of Greed"; right?

A. I'm familiar with the article, yes.

Q. And in your view, that was a very damaging article; right?

A. Yes.

Q. And in order to remedy the damage, Scientology took out a series of full page ads over a number of days in USA Today; right?

A. In part, but that didn't completely recompense this.

Q. So then would that be what you're talking about?

A. Do you mean would those precise ads be what I'm talking about or that type of activity?

Q. That type of activity.

A. That type of activity is among the possible types of activity that would fit within the considerations at the beginning before anything happened.

Q. So then at the beginning, what was the estimation of staff time that you made?

A. It wasn't broken down. All the factors were combined, all the possible factors of what it would take were combined and an amount was arrived at that seemed to approximate what all those factors would be. But an arithmetical calculation of this much in staff time, this much in media time, this much in attorney time, no, it was just based on the experience in dealing with that sort of activity.

Q. What was your experience in dealing with that sort of activity that you relied on?

A. It wasn't merely mine, it was --

Q. I know. I'm speaking of --

A. -- of the entire group at the table, including the lawyers.

Q. So what was it?

A. That $50,000 would be reasonable.

Q. Was there an actual quantification of staff time?

MR. BOWLES: Asked and answered.

THE WITNESS: Only as a component of the entire matrix.

MR. GREENE: Q. And how much was that?

A. It was a portion of the entire matrix. As I said, I didn't quantify this much for staff time, this much for attorney time. It was, well, what would go into it? Well, we'd have staff time going into it, attorney time going into it, and other factors --

Q. All right.

A. -- you see. And we arrived at, well, what would be a fair number, and what was arrived at after negotiation was that this number would be the correct, the best number.

Q. And what specifically was the staff time estimated to address?

MR. BOWLES: Objection, that's asked and answered, Mr. Benz. We're just going around in circles here. He's already answered the question, and Mr. Greene is now repeating himself.

MR. BENZ: I think this question is a little bit different from the standpoint he's asking whether -- not the amount of staff time or the quantification of staff time, but what it was --

MR. GREENE: The purpose.

MR. BENZ: All right.

THE WITNESS: Engaging in the activity of correcting whatever resulted from an improper disclosure as opposed to the normal duties. That was the general consideration.

MR. GREENE: Q. And what about attorney time?

A. What about it?

Q. What would that be? What would be the purpose of attorney time?

A. Attorney work needed and in rectifying that which flowed from the improper disclosure.

Q. Does that include attorneys fees to litigate?

A. Doesn't necessarily exclude them, although there is a separate provision in the settlement agreement for collecting attorneys fees in prevailing in any enforcement action.

MR. GREENE: Mr. Benz, I would request you direct the witness to answer the question directly rather than by giving me an evasive recitation back to the settlement agreement.

MR. BOWLES: I object to that. He's answered your question.

MR. BENZ: I think he has answered the question. If you want to ask him another question.

MR. GREENE: Okay.

Q. Are you saying then that since attorneys' -- there's an attorneys' fees provision in the contract, that attorneys' fees to rectify a 7-D violation are not included, or were not included in the assessment of the $50,000 as being a reasonable calculation?

A. No, that's not what I said. That's actually not what I'm saying, because there's different types of attorneys' fees for different types of activity the attorney would be engaged upon in rectifying a 7-D disclosure.

There may be, for example, hypothetically, other litigation necessary to correct a 7-D disclosure that Armstrong would not have been a party to, for example. And it wouldn't be a litigation designed for enforcement. And calling into play that provision of the settlement agreement. But it would be other --

Now, one of the factors entering into the consideration giving rise to liquidated damages is whether or not one would want to put directly at issue the attorneys' bills from the other litigation that may result from an improper disclosure.

So instead of doing that, a number is arrived at that includes as a component part the best estimate possible of what might be the attorneys' fees, you know, that would have to be spent. Do you see what I'm saying?

Q. No, I don't.

A. I can't help you then.

MR. BOWLES: It's clear to me. Next question.

MR. GREENE: Q. Were there attorneys' fees -- I mean, excuse me.

Were there liquidated damages provisions in the other contracts?

MR. BOWLES: Okay. Objection, that's going into the confidential content of the other agreements.

MR. GREENE: Number one, we have a waiver. This witness yesterday testified at length about what we did with respect to them and the provisions in their contracts.

Number two, the question whether or not the liquidated damages provision at issue here is a reasonable estimation or a penalty is directly -- the question of whether or not there were similar provisions for other people, and if so what the amounts of those provisions were, will provide relevant evidence directed at that issue.

And again, that's the affirmative defense, is that the purpose of this liquidated damages provision is to act as a penalty, not as a reasonable assessment. And certainly one way of determining whether or not this liquidated damages provision is a penalty is what its amounts are in comparison to the other people who were all part of this universal settlement.

MR. BENZ: Well, I don't think the question was quite --

Could you read that question back again?

(Pending question read by the reporter.)

MR. BOWLES: This goes to the content of the other agreements. There has been no waiver. Yesterday's testimony dealt with initial considerations on the overall negotiation with Mr. Flynn. We've objected to the content of the other agreements. That objection has been sustained yesterday and this is no different.

MR. BENZ: I'm going to sustain the objection with this comment, that if plaintiff intends to defend on the grounds that this was the same provision in all of the contracts, or to respond to the affirmative defense that everybody in the whole world agreed to that, I mean, everybody in connection with the settlement agreed to a similar -- to a liquidated damages provision, and to a similar liquidated damages position, I will recommend that discovery be reopened and/or that the court prohibit admission of that evidence if so offered by the plaintiff. Obviously, I can't rule on it. But with that in mind, I will sustain the objection.

MR. GREENE: Well, then can we -- would the referee inquire of the plaintiff whether or not that's going to be their position so that we can take the action that we need to to get the discovery we need, if we need it? I mean, if they're willing to enter into that stipulation, then that's fine. But if they're not, then we need to know that so that we can take the appropriate actions because trial is coming right up quick.

MR. BENZ: Well, I can't ask them to -- I don't believe I have the power to ask them to so stipulate.

My ruling is based upon the fact that there's nothing to indicate that is part of their defense. I mean, excuse me, not a defense, but response to the affirmative defense. If they take that position, then my ruling would obviously be different and I would ask the trial judge to take that into consideration in ruling on the admissibility of whatever may be offered.

MR. GREENE: Okay.

Q. Aside from Armstrong's agreement and staff time and attorney time required to correct, as you say, a 7-D violation, are there any other factors that went into your calculus in consequence of which you arrived at the $50,000 liquidated damages figure?

A. I believe I gave two other factors, which was any other expenses that we would have to pay in order to fix the result of that, and I believe you introduced the concept of whether that could include payments for advertisements to fix it. And I agreed that that could include that.

And then, of course, there's the general consideration, which I've testified to more than the other specific components, which was a sense from the group discussing what to put in the agreement, what would be reasonable based on our experience of what it would take to fix some sort of improper disclosure. Those are the ones that I'm aware of as I sit here.

Q. At the time of consideration, you did not think about advertisements, did you?

A. I don't remember whether we did or not. But it would be the sort of expense that would be within what we did consider.

Q. And what would need to be fixed and corrected would be false information coming from Armstrong about Scientology; right?

A. Well, that provision of the agreement isn't limited to an assessment of whether what he says is true or false, but that would be a factor.

Q. And that was a very important factor, wasn't it?

A. It was an important factor, certainly.

Q. Were there negotiations with Flynn with respect to what the amount of the liquidated damages would be?

A. I believe so.

Q. And how did those negotiations go? Did you guys first say, "Well, what we want is $100,000 per violation," and he came back and say, you know, 25?

A. No, I don't remember it being that way.

MR. BOWLES: This is also asked and answered, Mr. Greene, about an hour ago.

MR. GREENE: Q. Were any numbers discussed back and forth between your side and Flynn in consequence of which the $50,000 amount was arrived at?

A. At least $50,000 was one -- was a number discussed. I don't remember whether there were other numbers discussed. I just don't remember one way or the other.

Q. You are familiar with two individuals named Vicky and Richard Aznaran, are you not?

A. Yes.

Q. And they executed settlement agreements with CSI, did they not, among other entities?

A. They have, yes.

MR. GREENE: I would like to mark as Exhibit 23 an eight-page agreement entitled Mutual Release Agreement, and then as 24 one with the same title, with 23 pertaining to Vicky Aznaran, 24 to Richard Aznaran.

(Defendant's Exhibit Nos. 23 and 24 marked.)

MR. BOWLES: Have you got extra copies?

MR. GREENE: No.

Q. Would you take a look at Exhibit 23, please.

A. I've looked over it.

Q. The last page has got somebody who has signed on behalf of CSI; right?

A. Yes.

Q. And you were in CSI legal at the time -- or in OSA legal within CSI at the time this agreement was executed, weren't you?

A. Not really. I was officially posted there, but this was during the time period when I was on the RPF.

Q. This was when you were on the RPF?

A. Yes.

Q. Subsequently, you have seen these agreements, have you not?

A. Yes.

Q. And Exhibit 23 is an accurate copy of Vicky Aznaran's settlement agreement, is it not?

A. If you say so. It appears to be complete, but I don't know.

Well, wait a minute.

The number is Xeroxed off the bottom of page five, but otherwise it appears to be complete.

Q. And would you conduct the same examination with respect to Exhibit 24.

A. Yes.

Q. And Exhibit 24 appears to be a true and correct copy of Richard Aznaran's settlement agreement with CSI; does it not?

A. It appears to.

Q. Now, Richard Aznaran worked for the Scientology organization as the head of security worldwide, did he not?

MR. BOWLES: I'm sorry, can you read back or restate it?

MR. GREENE: Q. Yes. Richard Aznaran worked for the Scientology organization as head the head of security worldwide, did he not?

MR. BOWLES: Objection, vague.

THE WITNESS: No. He worked for us. He worked in security for a time, a brief time, but I wouldn't describe his position as that.

MR. GREENE: Q. Richard Aznaran actually conducted or designed the security in Gilman Hot Springs, didn't he?

A. I'm aware of him saying he did, yes.

Q. And you're aware of the fact that he did so do that, aren't you?

A. Some, but I couldn't say which.

Q. And Vicky Aznaran was the inspector general for Religious Technology Center; right?

A. Yes.

Q. She was directly under David Miscavich; right?

A. Well, that was one of the issues in the suit, whether she was or wasn't. I don't know what she considered herself. She was the president of Religious Technology Center and the inspector general, which was a senior position in that entity.

Q. And she was privy to a tremendous amount of information having to do with day-to-day Scientology operations, wasn't she?

A. I don't know what she availed herself of. I have no idea.

Q. Do you have any explanation why the liquidated damages provisions in Exhibits 23 and 24 is $10,000 per violation?

A. I don't know. I wasn't involved in the process that led to these documents.

Q. Do you know whether or not -- strike that.

Richards and Vicky Aznaran left the Scientology organization in April of 1988, to your knowledge, didn't they?

A. No.

Q. Or 1987, excuse me?

A. Again, no. They originally left in March.

Q. March of 1987?

A. That's correct.

Q. And they routed out of Scientology, didn't they?

A. They routed off staff.

Q. And one of the conditions of their routing off staff was the execution of Exhibits 23 and 24; isn't that right?

A. I don't know if it was a condition of their routing off staff. It was a document, to my knowledge, that was signed so as to document the relationship with them at the time, but it wasn't necessarily a condition of their routing off staff. It happened to have been done, as you can see, because it's sitting on the table.

Q. Aside from the loss that you attributed to having to pay for attorney time, staff time, expenses, is there any other component of loss which you included in your calculus that resulted in the $50,000 liquidated damage figure?

A. There may have been. There were several people involved from our side in the group that resulted in the settlement. I could only speak from my point of view of

I, SUSAN M. LYON, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That the witness named in the foregoing deposition was present and duly sworn to testify the truth in the within-entitled action on the day and date and at the time and place therein specified;

That the testimony of said witness was reported by me in shorthand and was thereafter transcribed under my direction into typewriting;

That the foregoing constitutes a full, true and correct transcript of said deposition and of the proceedings which took place;

That the witness was given an opportunity to read and, if necessary, correct said deposition and to subscribe the same;

That I am a disinterested person to the said action;

IN WITNESS WHEREOF, I have hereunto subscribed my hand this 8th day of August 1994.

SUSAN M. LYON
CSR #5829

MUTUAL RELEASE AGREEMENT

1. This MUTUAL RELEASE AGREEMENT is made and entered into by and between VICKI AZNARAN and the Religious Technology Center; Church of Scientology International; Church of Scientology of California; Church of Spiritual Technology; all other Scientology organizations or entities as well as the officers, agents, representatives, employees, volunteers, trustees, directors, successors, assigns, and legal counsel of each of the forgoing organizations or entities; Pat Broeker and Anne Broeker (hereinafter collectively referred to as the "CHURCH"); and Author Services Incorporated, it's officers, agents, representatives, employees, volunteers, trustees, directors, successors, assigns and legal counsel; the Estate of L. Ron Hubbard, it's executor, beneficiaries, legal counsel and employees; Author's Family Trust, it's trustee, employees, beneficiaries, and legal counsel (hereinafter collectively referred to as the "ESTATE/ASI").

2. The CHURCH agrees to indemnify VICKI AZNARAN against any damages stemming from lawsuits which exist now or are brought against her in the future arising out of her association with the Church of Scientology or any posts she has held in the Church. It is understood that as a part of this agreement the CHURCH will provide free legal counsel to VICKI AZNARAN providing she cooperates fully with the CHURCH and CHURCH attorneys and she contacts the CHURCH immediately when she becomes aware of any potential or real legal threat to herself and/or the CHURCH.

DEFENDANT'S EXHIBIT
23
7/27/9

3. For and in consideration of the above mutual covenants, conditions and release contained herein, VICKI AZNARAN does hereby release, acquit and forever discharge for herself, her heirs, successors, executors, administrators and assigns, the CHURCH and the ESTATE/ASI from any and all claims, demands, damages, actions and causes of action of every kind and nature, known or unknown, from the beginning of time to and including the date hereof.

4. For and in consideration of the mutual covenants, conditions and release contained herein, the CHURCH and the ESTATE/ASI do hereby release, acquit and forever discharge for it, its successors and assigns, VICKI AZNARAN, her agents, representatives, heirs, successors, assigns, legal counsel and estate and each of them, of and from any and all claims, causes of action, demands, damages and actions of every kind and nature, known or unknown, for or because of any act or omission allegedly done by VICKI AZNARAN from the beginning of time to and including the date hereof.

5. It is understood that this mutual release is not an admission of liability on the part of any party to this Agreement. In executing this Release Agreement, VICKI AZNARAN acknowledges that she has released the organizations, individuals and entities listed in Paragraph 1.

6. Further, the undersigned hereby agree to the following:

A. That liability for any claims is expressly denied by each party herein released, and this Agreement shall never be treated as an admission of liability or responsibility at any time for any purpose.

B. VICKI AZNARAN has been fully advised and understands that any alleged injuries or alleged money claims sustained by her are of such character that the full extent and type of injuries or money claims may not be known at the date hereof, and it is further understood that said alleged injuries, whether known or unknown at the date hereof, might possibly become progressively worse and that as a result, damages may be sustained by VICKI AZNARAN; nevertheless, VICKI AZNARAN desires by this document to forever and fully release the CHURCH and the ESTATE/ASI. VICKI AZNARAN understands that by the execution of this release no claims arising out of her experience with, or actions by, the CHURCH and the ESTATE/ASI, from the beginning of time to and including the date hereof, which may now exist or which may exist in the future may ever be asserted by her or on her behalf, against the CHURCH and the ESTATE/ASI.

C. VICKI AZNARAN agrees never to create or publish or attempt to publish, and/or assist another to create for publication by means of magazine, article, book or other similar form, any writing, or to broadcast, or to assist another to create, write, film or video tape or audio tape, any show, program or movie, concerning her experiences with the Church of Scientology, or personal or indirectly acquired knowledge or information concerning the Church of Scientology, L. Ron Hubbard, or any entities and individuals listed in Paragraph 1 above. VICKI AZNARAN further agrees that she will maintain strict confidentiality and silence with respect to her experiences with the Church of Scientology and any knowledge or information she may have concerning the Church of

Scientology, L. Ron Hubbard, or any of the organizations, individuals and entities listed in Paragraph 1 above. VICKI AZNARAN expressly understands that the non-disclosure provisions of this subparagraph shall apply, but not be limited to, the contents or substance of any documents she may have possessed while in the Church including but not limited to any tapes, films, photographs, or variations thereof which concern or relate to the religion of Scientology, L. Ron Hubbard, or any of the organizations, individuals, or entities listed in Paragraph 1 above. VICKI AZNARAN agrees that if the terms of this paragraph are breached by her, that the aggrieved party listed hereinabove would be entitled to liquidated damages in the amount of $10,000 for each such breach. The reasonableness of the amount of such damages are hereto acknowledged by VICKI AZNARAN.

D. VICKI AZNARAN agrees to return to the CHURCH at the time of the consummation of this Agreement, all materials in her possession, custody or control of any nature - except for any materials she personally possesses that are generally publically available and sold by the Church or their authorized agents - any documents, papers, memorandums, tapes, films, photographs, or any variations thereof which concern or relate to the religion of Scientology or any of the persons or entities listed in Paragraph 1 above.

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F. VICKI AZNARAN agrees not to testify or otherwise participate in any other judicial, administrative or legislative proceeding adverse to Scientology or any of the organizations, individuals or entities listed in Paragraph 1 above unless compelled to do so by lawful subpoena or other lawful process. Unless required to do so by such subpoena, VICKI AZNARAN agrees not to discuss her experiences or personal or indirectly acquired knowledge or information concerning the organizations, individuals, or enitities listed in Paragraph 1, with anyone other than members of her immediate family. VICKI AZNARAN shall not make herself amenable to service of any such subpoena in a manner which invalidates the intent of this agreement. As provided hereinafter in Paragraph 16, the contents of this Agreement may not be disclosed.

G. VICKI AZNARAN hereby acknowledges and affirms that she is not under the influence of any drug, narcotic, alcohol or other mind-influencing substance, condition or ailment such that her ability to fully understand the meaning of this Agreement and the significance thereof is adversely affected.

7. This Release Agreement contains the entire Agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. This Release may be

amended only by a written instrument executed by the undersigned. The parties hereto have carefully read and understand the contents of this Release Agreement and sign the same of their own free will, and it is the intention of the parties to be legally bound hereby. No other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein shall be deemed to in any way exist or bind any of the parties hereto.

8. VICKI AZNARAN agrees that she will not assist or advise anyone, including partnerships, associations or corporations, contemplating any claim or engaged in litigation or involved in or contemplating any activity adverse to the interests of any entity or class of persons listed above in Paragraph 1 of this Agreement.

9. The parties to this Agreement acknowledge that all parties enter into this Agreement freely, voluntarily, knowingly and willingly, without any threats, intimidation or pressure of any kind whatsoever and voluntarily execute this Agreement of their own free will.

10. In the event any provision hereof is unenforceable, such provision shall not affect the enforceability of any other provision hereof.

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14. The parties to this Agreement agree that all parties have carefully read this Agreement and understand the contents thereof and that each reference in this Agreement to any party includes successors, assigns, principals, agents and employees thereof.

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16. The parties hereto each agree not to disclose the contents of this executed Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement, on the date opposite their names.

Dated: 9 Apr '87

Vicki Aznaran
VICKI AZNARAN

Dated: 13 April 87

RELIGIOUS TECHNOLOGY CENTER
By:

Dated: 14 April 1987

CHURCH OF SCIENTOLOGY INTERNATIONAL
By:

Dated: 13 April 1987

CHURCH OF SCIENTOLOGY CALIFORNIA
By:

Dated: 9 April 1987

CHURCH OF SPIRITUAL TECHNOLOGY
By:

Dated: 13 April 1987

AUTHOR SERVICES INC.
By:

Dated: 13 April 1987

ESTATE OF L. RON HUBBARD
By:

Dated: 13 April 1987

AUTHOR'S FAMILY TRUST
By:

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DEFENDANT'S EXHIBIT 24

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RICK AZNARAN

Dated: 13 April 1987
By:
RELIGIOUS TECHNOLOGY
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Dated: 14 April 1987
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CHURCH OF SCIENTOLOGY
INTERNATIONAL

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CHURCH OF SPIRITUAL
TECHNOLOGY

Dated: 13 April 1987
By:
AUTHOR SERVICES INC.

Dated: 13 April 1987
By:
ESTATE OF L. RON HUBBARD

Dated: 13 April 1987
By:
AUTHOR'S FAMILY TRUST

By:

4077

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

FILED
JAN 20 1995
HOWARD HANSON
MARIN COUNTY CLERK
Dep.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

BY FAX

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. 157 680 [CONSOLIDATED] DECLARATION OF KENNETH D. LONG IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT DATE: January 27, 1995 TIME: 9:00 a.m. DEPT: 1 TRIAL DATE: May 18, 1995

I, KENNETH D. LONG, hereby state:

1. I am a staff member in the Legal Bureau of the Church of Scientology International, in which I perform the functions of a paralegal. From 1980 through June, 1992, I was a staff member of the Church of Scientology of California and worked as a paralegal in the Legal Bureau of that Church.

2. Since August 1982, I have worked in a paralegal capacity on legal matters relating to Gerald Armstrong. Through the course of this work, I have studied the documents pertaining to legal matters involving Gerald Armstrong, have assisted counsel in the taking of depositions of Gerald Armstrong, and have worked on cases and trials either directly involving Gerald Armstrong or in which Armstrong testified. I am familiar with the proceedings in the case of Church of Scientology vs. Gerald Armstrong, L.A.S.C. Case No. C420153. I am also familiar with the press and media attention which Armstrong obtained prior to the settlement. Further, I am familiar with the releases signed by Vicki and Richard Aznaran. It is based on the above knowledge and experience that I make this declaration and if called upon to do so, I could and would competently testify thereto.

3. At the time that the Aznarans signed release agreements, they were employees of a Church-related entity, and had decided to leave that employment. They had not publicly attacked any Church of Scientology, had not testified on behalf of any anti-Church litigant, and were not themselves anti-Church litigants at the time that they signed the releases.

4. At the time the Church settled with Armstrong, Armstrong was both an anti-Church litigant and a professional witness against the Church in other litigation. He was also a paralegal who worked extensively on anti-Church cases, and a self-designated public relations man who gave interviews to many reporters for sensationalist journals.

5. Prior to December 1986, Armstrong had testified in 15 cases, including his own, for a total of 28 trial days, attacking the Church of Scientology and related entities and individuals.

6. Prior to December, 1986, Armstrong had been deposed for 19 days, and had executed 28 declarations in 15 cases, attacking the Church of Scientology and related entities and individuals.

7. Before December, 1986 Armstrong appeared on more than 10 television and radio programs, attacking the Church of Scientology and related entities and individuals. In October, 1986, Armstrong was interviewed at length on the television program 2020.

8. Before December, 1986, more than 76 stories about Armstrong appeared in United States newspapers. In these articles, too, Armstrong attacked the Church and related entities and individuals.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 19th day of January, 1995, at Los Angeles, California.

Kenneth D. Long
KENNETH D. LONG

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 20, 1995, I served the foregoing document described as DECLARATION OF KENNETH D. LONG IN SUPPORT OF PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

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HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[x] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal

cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 20, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ____________ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J. Bartilson
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

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FILED

JAN 20 1995
HOWARD HANSON
MARIN COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

BY FAX

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. 157 680

[CONSOLIDATED]

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT

DATE: January 27, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: May 18, 1995

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I. INTRODUCTION

Armstrong concedes that he has breached the settlement agreement in precisely the manner described in plaintiff's moving papers, and that plaintiff has fully performed its side of the bargain, paying him $800,000. Armstrong attempts to avoid liability by resorting to theories of affirmative defense that have already been rejected by the courts in this action, and/or are not supported by California law. However, the evidence and the law is very clear: Armstrong and the Church entered into an agreement in 1986. The Church performed its part of the agreement, and Armstrong breached the agreement. Armstrong must pay the Church liquidated damages for his breaches.

Of the 43 affirmative defenses raised in his Answer, Armstrong has abandoned 40, and now raises only three: privilege, penalty, and duress. None can avail him now. The California courts have held that the "litigant's privilege" is not absolute: it can be waived by contractual agreement, and Armstrong has so waived it. Further, current law presumes the validity of a liquidated damages clause, and places the burden on the defendant to raise specific facts which demonstrate "that the provision was unreasonable under the circumstances existing at the time the contract was made." Armstrong has not done this. Instead, he has cited to old case law which attempted to interpret an earlier statute, and is irrelevant to the issues which must be decided today. His argument concerning duress, repeated yet again with only his own contradictory declaration for support, has already been rejected by two courts and must be rejected by this Court as well.

In short, Armstrong is grasping at straws. This court can, and should, interpret the terms of the contract as a matter of law. Armstrong has admitted making the contract; he has admitted each and every breach; and every court that has considered the contract thus far has agreed that it is valid and must be upheld. Summary adjudication is mandated.

II. ARMSTRONG HAS NOT DEMONSTRATED THE EXISTENCE OF A TRIABLE ISSUE OF MATERIAL FACT

By legislation adopted in 1992 and 1993, the Legislature changed the burdens of proof which the parties to a summary judgment motion must bear. Section 437c(o)(1) of the Code of

Civil Procedure now provides, in part, that

> A plaintiff. . . has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff. . . has met that burden, the burden shifts to the defendant . . . to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.

(emphasis supplied).

Moreover, to overcome a summary judgment, a defendant may not rely on mere allegations or denials in his pleadings:

> [O]nce the plaintiff has met that burden, the burden shifts and, to defeat the motion, the opposing defendant must produce sufficient admissible evidence to raise a triable issue of material fact either as to the cause of action or as to an affirmative defense.

American States Insurance Company v. Superior Court (1994) __ Cal.App.4th ___, 33 Cal.Rptr.2d 616, 619 (Insured could not overcome insurers showing that it was not required to defend by their own "vague, ambiguous and speculative statements").

Further, it is not sufficient merely for a defendant to demonstrate that a factual dispute of some sort exists: if no conflict exists as to any element of plaintiff's claim or as to an affirmative defense, "no amount of factual conflict upon other aspects of the case will preclude summary judgment." Shively v. Dye Creek Cattle Company (1994) __ Cal.App. 4th ___, 35 Cal.Rptr. 238, 241.

In response to plaintiff's summary adjudication motion, Armstrong has admitted that the following facts, which establish the essential elements of plaintiff's claims, are not in dispute:

- That plaintiff and Armstrong entered into a settlement agreement ("the Agreement") in December, 1986 [Sep.St. No. 1 - 4];
- That Armstrong was represented by, and consulted, more than one attorney concerning the provisions of the Agreement prior to executing it [Sep.St.No. 5 (Armstrong disputes only the quality of the representation and advice that he received)];
- That Armstrong assured plaintiff and plaintiff's lawyers, on videotape, while signing the Agreement, that he had read and understood the entirety of the Agreement, and that he was signing it freely, and without duress or coercion [Sep.St.No. 6];
- That Armstrong received approximately $800,000 as his portion of the total settlement

sum paid by plaintiff [Sep.St.Nos. 7, 8];

- That one of the provisions of the Agreement provided that Armstrong agreed to "maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology [or] L. Ron Hubbard. . . .," and that if Armstrong breached the terms of this provision, "CSI . . . would be entitled to liquidated damages in the amount of $50,000 for each such breach." [SepSt.No. 9];
- That in 1991 and 1992, Armstrong provided declarations to anti-Scientology litigants which discuss Scientology, and which were filed in two cases [Sep.St.No. 15, 18, 23, 24];[1] and
- That in 1992, Armstrong provided interviews to reporters from the Cable News Network and The American Lawyer magazine [Sep.St.No. 19, 20].[2]

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[1] Armstrong disputes whether or not the content of the Aznaran declaration exposes him to liability [Sep.St.No. 18]. This is not a factual dispute, however, as both parties agree as to the contents of the declaration [Plaintiff's Exhibit 1A, Exhibit 11.]. The court need only interpret the unambiguous contents of the declaration to determine whether or not the declaration is a breach of the contract. The declaration states, in relevant part, "I was a Scientologist from 1969 to 1981 and held many organizational positions during that period. . . ." [Ex. 11 to Ex. 1A, ¶1]; "Throughout 1980 and 1981 I was L. Ron Hubbard's biographical researcher and archivist. During that period I read and studied his letter dated September 7, 1955 to the Federal Bureau of Investigation and I provided a copy of it to writer, Omar V. Garrison for his use in a biography of Hubbard. . . ." [Id., ¶2]; and "While I was a Scientologist I read and studied L. Ron Hubbard's Technical Bulletin of July 22, 1956. It was published in the 1970's in bound volumes of Hubbard's "technical" writings and has continued to be published in later volumes up to the present time. . . ." [Id., ¶3] Armstrong's argument that these statements do not breach his agreement to "maintain strict confidentiality and silence with respect to his experiences with the Church of Scientology and any knowledge or information he may have concerning the Church of Scientology [or] L. Ron Hubbard" is frivolous on its face. Further, paragraph 7(D) also prohibits Armstrong from disclosing the contents of documents which concern or relate to the Church or L. Ron Hubbard. The declaration breaches this clause also.

[2] Similarly, Armstrong does not dispute that he granted interviews or made statements, but claims that the statement, "I'm an expert in the misrepresentations Hubbard made about himself from the beginning of Dianetics until the day he died," which Armstrong made to CNN reporter Don Napp for national broadcast, is not covered by the Agreement. This is so, according to Armstrong, because he supposedly acquired some of his "expertise" after the execution of the Agreement. By the clear terms of the Agreement, the date on which Armstrong gained his knowledge is irrelevant: he agreed to "maintain strict confidentiality and silence" on the subjects of Scientology and L. Ron Hubbard. As to the Horne interview, Armstrong admitted in deposition that he discussed settlement agreements between the Church and others, in (continued...)

Armstrong has not provided any evidence of facts which contradict these essential elements. Instead, the evidence which Armstrong has provided consists of two volumes of ad hominem attacks on plaintiff, their counsel and his own former counsel; a mass of irrelevant papers filed in other cases; and a series of vague, speculative conclusions on Armstrong's own part that he should be excused from performance. None of this "evidence" creates any issue of fact that is material to determination of these three causes of action. As demonstrated below, none of it supplies any issue of material fact as to Armstrong's three asserted affirmative defenses, either.

III. ARMSTRONG'S AFFIRMATIVE DEFENSES DO NOT RELEASE HIM FROM LIABILITY UNDER THE CONTRACT.

Armstrong has resisted liability pursuant to the Agreement for three years, claiming that the contract was void because it violated public policy, violated his first amendment rights, violated due process, was conceived under duress, was an illegal agreement, etc. etc. -- all of the defenses listed in his affirmative defenses, and every creative twist that he and his lawyers could add to those. By the time the issue went to the Court of Appeal, Armstrong devoted 10 pages of his appellate briefing to telling the Court just how many reasons he had to justify taking $800,000 from plaintiff and welshing on his end of the deal. The Court of Appeal's response was to uphold the plaintiff's preliminary injunction and to "decline any extended discussion" of Armstrong's "shotgun-style" arguments. [Sep.St.No. 13.] Here, Armstrong has abandoned forty of those defenses, and relies on only three: the litigant's privilege, penalty and duress. As a matter of law, however, he has failed to meet his burden of demonstrating how any of these defenses can invalidate his contractual obligations.

A. Armstrong May Not Raise The Litigant's Privilege As A Defense To An Action For Breach Of A Non-Disclosure Contract

Armstrong devotes more than six pages of his opposing brief to providing this Court with a history of the common-law principals which have prevented the federal courts from entertaining 42 U.S.C §1983 civil rights actions against witnesses and prosecutors [Opp.Mem. at 7-11].

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[2](...continued)
addition to his own settlement agreement, with Horne [Armstrong's Exhibit 1(D) 352:15 - 353:9]. Again, this is knowledge concerning the Church.

However, he has neglected to provide the Court with the single California case which is dispositive of the issue which he raises: ITT Telecom Products Corp. v. Dooley (1989) 214 Cal.App.3d 307, 262 Cal.Rptr. 773.

In ITT Telecom, the defendant, Dooley, was a former employee of ITT who signed a non-disclosure agreement during his employment. After leaving ITT, he accepted employment as an expert "consultant" to Intercomosa, a company in litigation with ITT. ITT sued Dooley for, inter alia, breach of contract, alleging that, while acting as Intercomosa's consultant, he had disclosed "confidential knowledge" about ITT in violation of his non-disclosure agreement. Dooley, like Armstrong, argued that he was protected from the breach of contract claim by the litigant's privilege (Civil Code § 47(b)). The issue, as framed by the Court was, "Does the [Section 47(b)] privilege apply to statements violating a contract of confidentiality?" 214 Cal.App.3d at 317. After noting that "it is possible to waive even First Amendment free speech rights by contract," Id. at 319, the Court of Appeal concluded that Dooley "was not privileged under Civil Code section 47, subdivision 2, to voluntarily breach an express confidentiality agreement." Id. at 320.[3]

This case is dispositive of the issue raised by Armstrong. Armstrong, like Dooley, entered into a contract in 1986 in which he agreed "to maintain strict confidentiality and silence" concerning plaintiff and the other beneficiaries of the Agreement. He has admitted that in 1991 and 1992, he executed declarations for anti-Church litigants in two cases, and provided those declarations to the attorneys for the litigants. On their face the declarations violate the Agreement. [See Note 1, supra] The litigant's privilege is no more available to Armstrong than it was to Dooley, and for the same reason: these parties contractually waived their right to claim the privilege.

Since it was decided in 1989, the ITT case has been cited with approval by the California

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[3] Unfortunately, the omission of this case by Armstrong and his counsel cannot be charitably termed to be accidental. The case was cited by plaintiff in their brief to the Court of Appeal in this action, and then cited with favor by that Court in its opinion [Plaintiff's Exhibit C to Request for Judicial Notice at 9.] It was also cited by plaintiff in their opening memorandum of points and authorities herein. [Mem. at 12, fn 6] Knowing failure to cite this controlling law is sanctionable conduct.

Supreme Court and by other Courts of Appeal (as it was by the Second District in this case). Silberg v. Anderson (1990) 50 Cal.3d 205, 217, 266 Cal.Rptr. 638, 645; Mattco Forge, Inc. v. Arthur Young & Co. (1992) 5 Cal.App.4th 392, 406, 6 Cal.Rptr.2d 781, 790; Budwin v. American Psychological Association (1994) 24 Cal.App.4th 875, 881, 29 Cal.Rptr.2d 453, 457. The limitations that these courts have placed on the litigation privilege make it plain that the privilege is not available to Armstrong in the face of his explicit contractual obligation to "maintain strict confidentiality and silence." As the Second District stated in Mattco, supra,

> Sometimes the litigation privilege is called "absolute." This characterization overstates the mater. The privilege applies only to tort causes of action, and not to the tort of malicious prosecution. The privilege does not protect, moreover, a claim for damages under the Invasion of Privacy Act, a psychotherapist's voluntary disclosure during a custody proceeding of a patient's confidential communications, or, as we have seen, statements made in a judicial proceeding that violate a contractual provision not to disclose a former employer's trade secrets.

5 Cal.App.4th at 406 (citations omitted).

Thus, under controlling California law, the litigant's privilege is not a defense to plaintiff's breach of contract claims against Armstrong as a matter of law.

B. The Liquidated Damages Clause Is Presumed To Be Valid And Armstrong Has Not Raised Any Triable Issue Of Fact Concerning Its Validity

Armstrong argues that the liquidated damages provision should be invalidated because he made no effort to ascertain what a fair amount of liquidated damages would be prior to signing the contract, citing a 1976 case to the effect that both parties must participate in such an effort before a liquidated damages provision will be upheld. Armstrong is relying on case law which has been superseded. In 1977, Section 1671 of the Civil Code, which governs liquidated damages provisions, was revised. Where the earlier statute had placed the burden on proponents of liquidated damages provisions to defend their enforceability, the current statute instead presumes their validity. Current Civil Code §1671(b) provides in relevant part that, ". . . a provision in a contract liquidating the damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made."[4]

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[4] The exceptions to this rule, noted in subdivision (c), are consumer contracts for purchase, (continued...)

Here, Armstrong has not demonstrated that the provision was unreasonable under the circumstances existing at the time the contract was made. He has asserted, contradicting himself, both that he did not discuss the liquidated damages amount with anyone, and that he discussed it with both of his attorneys. [See, Armstrong Dec. at ¶12 and ¶¶5 & 13.] He claims that he "never agreed" to the provision, but has admitted the validity of a videotape, made at the time of the settlement, in which he assured plaintiff and plaintiff's lawyer that he had, indeed, read and agreed to the entire Agreement. He can then be observed signing the Agreement and initialing every page; he has authenticated his signature and his initials on the pages on which the liquidated damages provision appears.

Armstrong's current statements which contradict his admissions are insufficient to create an issue of fact as to the circumstances which existed at the time the Agreement was made. In the words of the First District, "In reviewing motions for summary judgment, the courts have long tended to treat affidavits repudiating previous testimony as irrelevant, inadmissible or evasive." Advanced Micro Devices, Inc. v. Great American Surplus Lines Ins. Co. (1988) 199 Cal.App.3d 791, 800-801, 245 Cal.Rptr. 44. This is because

> [A]dmissions against interest have a very high credibility value. . . Accordingly, when such an admission becomes relevant to the determination, in motion for summary judgment, of whether or not there exist triable issues of fact (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits.

D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 21, 112 Cal.Rptr. 786.

The only other evidence which Armstrong offers does not support his theory that the amount of the liquidated damages was not reasonable at the time the Agreement. Lynn Farny's testimony, for example, simply reiterates the necessity which the Church felt at the time of the settlement to use every means possible to secure Armstrong's performance of the contract. Mr. Farny testified that the amount of the liquidated damages was based on an estimate of the costs that plaintiff would be likely to incur if it had to "fix" one of Mr. Armstrong's breaches. [Ex. __ to Opp., 494:18 - 498:8.] He also explained that it was extremely difficult to know in

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[4](...continued)
rental or lease -- obviously not applicable to the present Agreement.

advance just what the damage would be from any given statement by Armstrong, rendering a liquidated damages provision necessary. [Id., 506:3 - 507:17.]

The releases signed by Vicki and Richard Aznaran in 1987, in which the liquidated damages provision called for $10,000 per breach in liquidated damages, do not demonstrate that the amount contained in the Agreement was excessive. On the contrary, if anything, the Aznaran declarations demonstrate the care with which the Church proposed a $50,000 liquidated damages provision for Armstrong. The Aznarans signed releases with the Church upon leaving: they were not suing the Church at the time, they had not been interviewed by the media, and they had not provided any aid to anti-Church litigants [Declaration of Ken Long in support of Motion for Summary Adjudication]. At the time the Church settled with Armstrong, however, Armstrong was not simply an anti-Church litigant: he was a professional witness against the Church in other litigation, a paralegal who worked extensively on anti-Church cases, and a self-designated PR who liked nothing better than to be interviewed by the sensational press. Prior to the Agreement, Armstrong had testified in 15 cases, including his own, for a total of 28 trial days. [Id., ¶¶5-6.] He had been deposed for 19 days. [Id.] He had filed 28 declarations in 15 cases [Id, ¶6], and he had appeared on more than 10 television and radio programs, including a lengthy interview in October, 1986 on 2020. [Id., ¶7.] He had been featured around the United States in more than 76 news stories. [Id., ¶8.] All of his testimony, all of his media appearances were attacks on the Church or other individuals and entities protected by the Agreement [Id., ¶¶4-8]. Under these circumstances, the Church had every right and reason to insist that further breaches by Armstrong were likely to result in significant damages, including damage to its reputation and litigation against it by other parties, and to insist on a substantial amount of liquidated damages in the event of a breach.

In 1991, the First District Court of Appeal undertook an historical analysis, and determined that the validity of a liquidated damages clause is an issue to be determined by the Court, and not the jury. Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1383, 1393, 1 Cal.Rptr.2d 446, 450. Based on the evidence presented by plaintiff, and Armstrong's failure to present any credible contradictory evidence, this Court should find the liquidated damages provision to be valid and enforceable as a matter of law.

C. Armstrong Cannot Avoid Summary Adjudication With Tired Claims Of Duress

As a final argument, Armstrong urges this Court to refuse to enforce the Agreement because he claims that he was subjected to coercion by his own lawyer, Michael Flynn, and another settling party, in 1986. Armstrong urged this same defense to Judge Sohigian, who found in 1992 that Armstrong had not persuasively shown any duress. He repeated his arguments to the Court of Appeal, who reiterated in 1994 that the record did not support his claims. Armstrong offers no new evidence to this Court. Rather, he merely repeats in his own declaration a recitation of the bad advice which he allegedly got from Flynn that convinced him to sign the Agreement. After years of litigation, he offers no evidence from any corroborating witness as to any of his claims.

Even if Armstrong's allegations are assumed to be true,[5] however, they still do not assert a defense of duress as to plaintiff. Armstrong does not offer evidence that the Church subjected him to duress or coercion. He claims that his lawyer and other litigants convince him to sign the Agreement. Armstrong cites no authority, and there is none, holding that a party may set aside a settlement agreement because his attorney strongly urged him to settle for nearly one million dollars.

Indeed, the fact that Armstrong accepted, retained and continues to retain the benefit of his bargain precludes him from seeking to set aside the Agreement. Under California law, even where an agreement is the product of duress, coercion, undue influence or fraud, it is voidable, not void. Civil Code §§ 1566, 1567. This distinction means that the allegedly wronged party, in this case Armstrong, must act in a timely and affirmative manner to rescind the voidable contract. The allegedly wronged party can also ratify a voidable contract by his or her subsequent conduct, as Armstrong has done in this case. Civil Code § 1588. Armstrong's continued acceptance and enjoyment of the benefits of the transaction, well beyond the time he signed the agreement, as a matter of law constitutes consent to and ratification of all the obligations of the agreement. Civ.Code § 1589. See, e.g., Union Pacific R.Co. v. Zimmer (1948) 87 Cal.App.2d 524, 197 P.2d 363. Under these circumstances, duress is not an affirmative defense to plaintiff's breach of contract claims.

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[5] Armstrong's argument that he did not have independent advice of counsel is also contradicted by his own deposition testimony that he consulted not one but three attorneys concerning the settlement agreement. [Sep.St.No. 5.]

IV. CONCLUSION

Armstrong has admitted to three separate breaches of the Agreement which require him to pay the Church a combined amount of $150,000 in liquidated damages. In his opposition, he has not provided substantial evidence of any disputed issue of material fact. Plaintiff is, accordingly, entitled to summary adjudication of its Fourth, Sixth, and Eleventh Causes of Action, and it is entitled to entry of judgment on those claims in the amount of $150,000.

Dated: January 20, 1995

Respectfully submitted,

MOXON & BARTILSON

By: Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 20, 1995, I served the foregoing document described as PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[x] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an

affidavit.

Executed on January 20, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ___________ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie J Bartilson
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

ORIGINAL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; MICHAEL WALTON; THE GERALD ARMSTRONG CORPORATION a California for-profit corporation; DOES 1 through 100, inclusive, Defendants.	No. **157 680** **ARMSTRONG'S REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH AND ELEVENTH CAUSES OF ACTION** Date: 1/27/95 Time: 9:00 a.m. Dept: One Trial Date: May 18, 1995

Defendant Gerald Armstrong hereby requests that the Court take judicial notice of the following records of the Superior Court of the State of California, Court of Appeal of the State of California, United States District Court, Central District of California pursuant to Evidence Code sections 452 and 453.

Exhibit A Notice of Motion and Motion to Exclude Testimony of Plaintiffs' Designated Expert Witness Margaret Singer filed on or about July 29, 1991 in Aznaran v. Church of Scientology of California, U.S.

	District Court, Central District of California, CV-881786 JMI(Ex).
Exhibit B	Plaintiff's Opposition to Motion to Exclude Expert Testimony filed on or about August 26, 1991 in Aznaran v. Church of Scientology of California, U.S. District Court, Central District of California, CV-881786 JMI(Ex).
Exhibit C	Declaration of Ford Greene Opposing Motion to Exclude Expert Testimony, Exhibit (F) thereto, Declaration of Gerald Armstrong in Opposition to Motion to Exclude Expert Testimony in Aznaran v. Church of Scientology of California, U.S. District Court, Central District of California, CV-881786 JMI(Ex).
Exhibit D	Order Ruling on All Remaining Pending Motions, signed by US District Judge James M. Ideman and filed on June 23, 1992, in Aznaran v. Church of Scientology of California, U.S. District Court, Central District of California, CV-881786 JMI(Ex).
Exhibit E	Request of CNN to Conduct Film and Electronic Media Coverage and Order filed March 20, 1992 in Scientology v. Armstrong, Marin Superior Court No. 152229 and Order that Filming is allowed, by Judge Michael B. Dufficy filed March 20, 1992

Exhibit F Defendants' And Counterclaimants' Opposition To Plaintiffs' and Counterdefendants' Motion for Protective Order Re Fifth Request For Production of Documents or Things and For Sanctions filed May 27, 1992, in Religious Technology Center v. Scott, United States District Court, Central District of California, CV 85-711 JMI (Bx); CV 85-7197 JMI (Bx)

DATED: January 13, 1995

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants.	CASE No. CV 88-1786 JMI(Ex) NOTICE OF MOTION AND MOTION TO EXCLUDE TESTIMONY OF PLAINTIFFS' DESIGNATED EXPERT MARGARET SINGER
AND RELATED COUNTERCLAIM	DATE: August 19, 1991 TIME: 10:00 a.m. COURTROOM: Hon. James M. Ideman

TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on August 19, 1991, defendants Religious Technology Center, Church of Spiritual Technology, Church of Scientology International, and Author Services Inc. will and hereby do move the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, for an order excluding all testimony of plaintiffs' designated expert Margaret Singer pursuant to Rule 403 of the Federal Rules of Evidence. Pursuant to standing order in this case, the matter will be submitted to the Court without oral argument.

This motion is brought on the ground that plaintiffs' designated expert witness, forensic psychologist Dr. Margaret Singer, is proffered by plaintiffs to testify on the subject of coercive persuasion. Dr. Singer's thesis on this subject has been rejected by the American Psychological Association because it lacks scientific basis. It has also been rejected by numerous courts, including the United States District Courts for the Northern District of California and the District of Columbia, and the Court of Appeals for the District of Columbia on the grounds that it is not generally accepted in the scientific community and not sufficiently established to be accepted as evidence in a federal court. The Motion is further brought on the following additional grounds: 1) Singer's theory would require the trier of fact to evaluate religious beliefs and practices, which is prohibited by the First Amendment; 2) Singer has exhibited such strong bias against the Church of Scientology and other newer religions that she is not qualified to testify as an expert; and 3) Singer's proffered testimony lacks probative value and fuels prejudices against defendants warranting exclusion under Rule 403 of the Federal Rules of Evidence.

In support of this motion, defendants reply upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the pleadings and records on file herein, and upon such other and further evidence as may properly come before the Court.

Dated: July 29, 1991

Respectfully submitted,

/S/

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, v. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants.	CASE No. CV 88-1786 JMI(Ex) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO EXCLUDE TESTIMONY OF PLAINTIFFS' DESIGNATED EXPERT MARGARET SINGER
AND RELATED COUNTERCLAIMS.	DATE: August 19, 1991 TIME: 10:00 a.m. COURTROOM: Hon. James M. Ideman

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INTRODUCTION

Plaintiffs Vicki and Richard Aznaran have designated a forensic psychologist, Dr. Margaret Singer ("Singer"), as their sole expert witness in this action, to opine on the subject of "coercive persuasion." In so doing, they proffer an expert to testify concerning a thesis of hers that has provoked the following reactions:

-- Outright rejection of the thesis by the American Psychological Association ("APA") because it "lacks the scientific rigor and evenhanded critical approach necessary for APA imprimatur...." (Letter to Singer, dated May 11, 1987, from Board of Social and Ethical Responsibility for Psychology of the APA, annexed as Exhibit K);

-- Exclusion of Singer's testimony regarding her thesis as she would apply it to the Church of Scientology because "her views on thought reform ... are not generally accepted within the scientific community." United States v. Fishman, 743 F.Supp. 713, 723 (N.D.Cal. 1990);

-- Exclusion of Singer's testimony on this subject because the court agreed with the Fishman analysis that her testimony is "'not sufficiently established to be admitted as evidence in federal courts of law.'" Greene v. Maharishi Mahesh Yogi, Nos. 87-0015, 87-0016 (D.D.C. Mar. 12, 1991) (annexed as Exhibit A), Slip. Op. at p. 14, quoting United States v. Fishman, supra, at 719, and

-- A judgment reversed and remanded because plaintiff "has failed to provide any evidence that Dr. Singer's particular theory ... has a significant following in the scientific community, let alone general acceptance." Kropinski v. World Plan Executive Council - U.S., 853 F.2d 948, 957 (D.C. Cir. 1988) (emphasis in original).

Consequently, the Church of Scientology defendants ("the Church") move to exclude Singer's testimony because her thesis has been resoundingly rejected both by the relevant scientific and professional communities and by federal courts from coast to coast. Moreover, Singer's Theory is repugnant to the First Amendment as the theory requires a trier of fact to evaluate religious beliefs and practices. Further, Singer has evidenced such a profound bias against the Church of Scientology and other, newer religions, that she is unqualified to testify with the imprimatur of an expert. Finally, Singer's proffered testimony lacks probative value and fuels prejudices against the Church warranting exclusion under Rule 403 of the Federal Rules of Evidence[1]

STATEMENT OF FACTS

1. Singer's Theory

Singer's testimony hinges on her opinion that the Church of Scientology "unduly influenced [the Aznarans] by psychologically dominating them, by stripping them of their ability to reason and impairing their capacity to exercise an informed consent, by usurping the independence of their will and conscience." Plaintiffs' First Further Responses to Defendants' Third Set of Interrogatories at 17 (Oct. 15, 1990) ("Expert Interrogatory Responses") (attached as Exhibit B). Singer maintains that the Church can exert such influence because it engages in the "systematic manipulation of social and psychological influences" ("SMSPI"),[2] a term coined by Singer that encompasses brainwashing, thought reform and coercive persuasion. Singer Trial Testimony at 2084 (Mar. 11, 1986), in Wollersheim v. Church of Scientology of California, No. C 332 027 (Super.Ct. L.A.Cty.) at 2084 ("Wollersheim Test") (attached as Exhibit C).[3]

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[1] The Church is not moving to exclude the testimony of Richard Ofshe, given plaintiffs' counsel's representation that he would not be offered as an expert.

According to Singer, the techniques used by what she characterizes as current influence programs "are more powerful . . . and often these programs attempt to induce conformity more rapidly" than those allegedly used in the prisons of China and

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[2] As defined by Singer, a system of thought reform consists of six essential elements: (1) substantial control over an individual's thought content and time, and in particular of the person's social and physical environment; (2) systematic creation of a sense of powerlessness in the person; (3) manipulation of a system of rewards, punishment, and experiences so as to promote learning of a particular belief or ideology; (4) manipulation of a system of rewards, punishments, and experiences to inhibit behavior that reflects beliefs held prior to joining the organization; (5) a closed system of logic and authoritarian structure that precludes criticism and reform of the organization; and (6) maintenance of an uninformed state in the subject. Singer and Ofshe, Thought Reform Programs and The Production of Psychiatric Casualties, 20 Psychiatric Annals 188, 189-90 (Apr. 1990) ("Thought Reform Programs").

[3] Because Singer sees these three terms as essentially synonymous, they shall be used interchangeably in this memorandum. See, e.g. Wollersheim Test at 2627, 2084 (Ex. C).

Korea,[4] Thought Reform Programs, 20 Psychiatric Annals at 189, sometimes being so effective as to cause individuals to lose their will or control after only two days. See Deposition of Margaret Singer at 190-91, (Oct. 10, 1989), in Gorman v. Lifespring Inc., No. 87-2572 (D.D.C.) ("Gorman Dep.") (Ex. F); see also Wollersheim Test at 2629 (Ex. C).

Singer brings a wide array of organizations within the sweep of those she dubs as the second generation of "interest influence and control programs." Singer contends that mainstream organizations such as the Fortune 500 company of Snap-On-Tools, as well as so-called "cults," large awareness groups and certain therapeutic communities, engage in thought reform. Declaration of Margaret Singer at para. 6 (June 24, 1988); Lowder v. Snap-On Tools Corp., No. 615-484 (Cal.Super.Ct. Santa Clara Cty.) (attached as Exhibit G); Thought Reform Programs, 20 Psychiatric Annals at 189. But she sweeps selectively, as well as broadly, when characterizing groups as engaging in thought reform.

Thus, she arbitrarily characterizes the Church of

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[4] Singer contends that her theory of SMSPI derives from studies of alleged thought reform of prisoners in China and Korea, as well as intellectuals in China in the 1950s, see generally R. Lifton, Thought Reform and the Psychology of Totalism (1961) ("Thought Reform"); Schein, Coercive Persuasion (1961); see also Declaration of Margaret T. Singer in support of Plaintiffs' Motion in Limine Re: Thought Reform, submitted in Miller v. Lifespring, No. 867-859 (Cal. Super.Ct. March 1989) ("Miller Decl.") (attached as Ex. D), although Singer's theory, unlike Lifton & Schein's models, does not require physical force or constraint or the threat of these sanctions. Singer Trial Testimony at 2879-82 (Mar. 25, 1985), in Christofferson v. Church of Scientology of Portland, No. A7704 05184 (Oregon Circuit Ct. Multnomah Cty.) ("Christofferson Test") (attached as Exhibit E).

Scientology (but not the Catholic Church) as engaging in coercive persuasion because, in her opinion, it supposedly isolates disciples, controls their environment, places demands that limit sleep, subjects them to peer pressure and positive and negative reinforcement, prohibits dissent and sometimes induces fear, guilt, and emotional dependency. Expert Interrogatory Responses at 17 (Ex. B). Compare with Declaration of Dr. Frank K. Flinn, dated May 30, 1991, paras. 18, 24, 26-31, 33 ("Flinn Decl.") (attached as Exhibit H) (discussing demands on nuns and monks). Because Singer's thesis rests upon unsubstantiated assertions, it is not surprising that she has never subjected her claims to empirical tests. It is for that and other reasons that her theories are disavowed and disapproved by the relevant communities.

2. Rejection of Singer's Methodology & Theory By the Professional Community

Singer's "studies" from which she concludes that particular organizations are coercive rest only on her reading of materials by and about the organization and conversations with a limited number of former members, see, e.g., Wollersheim Test at 2266-70 (Ex. C); Christofferson Test. at 2688, 2773-75 (Ex. E),[5] and her conclusions that the institution at issue caused an individual "psychological" harm derived most often solely from an interview with the hostile former member. Gorman Dep. at 103 (Ex. F). In neither instance does Singer look to a control or comparison group to guide or support her purported findings, nor regularly verify statements by the individual's reference to objective reports or sources. Singer has not published any systematic factual analysis or empirical studies to support her assertions. (See Declaration of Perry London, Section V, for a full discussion of the lack of scientific testing and validity of Singer's theories, Exhibit R.)

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[5] Thus, for example, Singer concluded in August, 1977 that the Church of Scientology engages in thought reform solely on the basis of reading several Church publications and speaking with six or seven former members. Christofferson Test at 2779. (Ex. E).

Singer's work not only lacks acceptance, but has been resoundingly rejected by her peers. In 1987, Singer chaired the Task Force on Deceptive and Indirect Methods of Persuasion and Control ("the Task Force") of the American Psychological Association ("APA"), which issued a report (the "Task Force Report") addressing "psychological influence techniques and their consequences, as exemplified in cults and large-group awareness trainings." See Task Force Report at 11 (attached as Exhibit I). The Task Force Report, which Singer drafted, discussed what it disapprovingly calls "cults," Deposition of Margaret Singer at 217-18 (July 22, 1987) in Slee v. Werner Erhard, No. N-84-497-JAC (D.C. Conn.) ("Slee Dep.") (attached as Ex. J), and concluded that many new members to such groups were especially accessible to the recruitment and persuasion techniques of the groups in question and that a "significant percentage" of those individuals are "clearly harmed." Task Force Report at 27 (Ex. I.) The Report by its own statement presented these conclusions without any "reliable data . . . . which would permit a comparison of the frequency of physical or psychological harm in religious cults and in mainstream society." Id. at 17. In fact, the Report conceded that in the absence of reliable data "conclusions must be based on anecdotal reports and investigations of groups which have caught researchers' attention for one reason or another." Id. In this instance, this "data" was nothing more than "knowledge" Singer gleaned from individuals already hostile to the organization in question and in most instances engaged in litigation with the group being castigated, as well as isolated anecdotes reported in literature. Slee Dep. at 217-18 (Ex. J).

The Board of Social and Ethical Responsibility for Psychology ("BSERP") of the APA reviewed and rejected the Task Force Report:

> BSERP . . . is unable to accept the report of the Task Force. In general, the report lacks the scientific rigor and evenhanded critical approach necessary for APA imprimatur. . . . The Board cautions the Task Force members against using their past appointment to imply BSERP or APA support and approval of the positions advocated in the report.

BSERP letter to M. Singer dated May 11, 1987 (attached as Exhibit K).[6] Based upon a similar analysis of the methodological deficiencies and lack of scientific procedures underpinning Singer's theory and "studies," Dr. Perry London, Dean of the Graduate School of Applied and Professional Psychology at Rutgers University, concluded that Singer's "theory of social influence which argues the existence of irresistible social influence processes and/or irreversible social influence process and/or subversion of will as a result of these social influence processes, is not a viable argument from the viewpoint of contemporary scientific psychology." (London Declaration, para. 41, Ex. R.)

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[6] Singer has attempted to downplay the rejection by asserting that the Board reviewed only a draft. See Slee Dep. at 366-69 (Ex. J). She, however, characterizes the report as "accurate," Slee Dep. at 369, and the work that remained as only a task of incorporating and criticizing additional studies. Slee Dep. at 368. She does not indicate that the methodology or approach was to change in any way.

In Molko v. Holy Spirit Ass'n, 46 Cal.3d 1092, 252 Cal.Rptr. 122 (1988), cert. denied, 490 U.S. 1084 (1989), members of the psychological, academic and religious communities filed amicus briefs urging affirmance of the district court's exclusion of Singer's proffered testimony on thought reform.[7] Twenty-three individuals, including psychologists, as well as professors of sociology and religion, submitted a brief before the California Supreme Court in which they argued principally that Singer's conclusions were not scientific in any meaningful sense and that her methodologies "depart so far from methods generally accepted in the relevant professional communities that they are incapable of producing reliable or valid results." Brief of Amicus Curiae Eileen Barker et al. at 8 (attached as Exhibit L).[8] A similar brief was filed with the United States Supreme Court by the Society for the Scientific Study of Religion and 50 renowned scholars and mental health professionals, in support of defendants' petition for writ of certiorari in Molko. See generally Brief of Amicus Curiae of Society for the Scientific Study of Religion, et al. (attached as Exhibit N).[9/]

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[7] The arguments set forth in these amicus briefs were not addressed by either court to which they were presented. The California Supreme Court explicitly declined to do so because these arguments were not raised below. Molko v. Holy Spirit Ass'n, 46 Cal.3d 1092, 1111 n.13, 252 Cal.Rptr. 122, 132, n.13 (1988). The United States Supreme Court, given that it denied certiorari, obviously did not address the arguments.

[8] The APA initially signed this brief. The organization (footnote continued)

Finally, several courts have found Singer's theory so lacking acceptance as to warrant its exclusion. In United States v. Fishman, 743 F.Supp. 713 (N.D.Cal. 1990), the court excluded Singer's testimony about the Church of Scientology's supposed "influence techniques" because the Court found that "her views on thought reform . . . are not generally accepted within the scientific community." 743 F.Supp. at 723. Most recently, Singer was excluded as an expert witness in Greene v. Maharishi Mahesh Yogi, Nos. 87-0015, 87-0016 (D.D.C. Mar. 12, 1991) (Ex. A). The court in Greene, as in Fishman, found there to be "insufficient evidence of acceptability to allow the testimony to be admitted." Slip. op.

(footnote continued)
withdrew its name when the Board of Directors, upon learning that a Task Force had been established to consider the issues the amicus brief addressed, decided that "it was premature. . . to endorse positions taken in the amicus brief prior to completion of the task force study . . . . " Motion of the APA to Withdraw as Amicus Curiae, in Molko v. Holy Spirit Association (Mar. 27, 1987) (attached as Ex. M). The subsequent rejection of the Task Force Report by BSERP, the APA board responsible for reviewing the Report, suggests that the APA would adhere to the view expressed in the amicus brief, namely that the scientific community does not accept Singer's theory or methodology.

9. When the brief was filed, the American Sociological Association ("ASA") was also an amicus; however, like the APA, the ASA withdrew its name. Neither at the time nor subsequently did the ASA state that its withdrawal was premised on a reassessment of and contrary conclusion about Singer's work. See United States v. Fishman, 743 F.Supp. at 718.

at 14.[10]

ARGUMENT

The proffered testimony of Singer is admissible only if it (1) is that of a qualified expert; (2) addresses a "proper subject"; (3) conforms with a generally accepted explanatory theory; and (4) possesses sufficient probative value to outweigh any prejudicial effect. See United States v. Amaral, 488 F.2d at 1153; United States v. Gwaltney, 790 F.2d 1378, 1382-83 (9th Cir. 1986), cert. denied, 479 U.S. 1104 (1987). Singer's proposed testimony, as detailed below, cannot satisfy a number of these criteria, nor is her theory "sufficiently established to have gained general acceptance in the particular field in which it belongs." Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923); see also United States v. Gillespie, 852 F.2d 475, 480 (9th Cir. 1988) (applying Frye test); United States v. Gwaltney, 790 F.2d at 1381 (same).

I. SINGER'S TESTIMONY IS INADMISSIBLE AS IT DOES NOT CONFORM TO A GENERALLY ACCEPTED THEORY

A. The Methodology Used by Singer Lacks General Acceptance in the Scientific Community

1. Singer's Sample Is Biased

First, as Singer's critics have noted, the sample upon which Singer relies for her conclusion that the Church of

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[10] See also Kropinski v. World Plan Executive Council, 853 F.2d 948, 957 (D.C. Cir. 1988) (finding court erred when admitting Singer's testimony given absence of evidence that "Singer's particular theory, namely that techniques of thought reform may be effective in the absence of physical threats or coercion" has general acceptance).

Scientology purportedly engages in the systematic manipulation of psychological and social influences is notably and fatally skewed. Singer relies for her knowledge of and conclusions about the Church of Scientology solely on interviews with former members, their families, and a review of articles or books published by the Church. Wollersheim Test at 2266-70 (Ex. C). Furthermore most of former Scientologists whom Singer has interviewed were suing or contemplating suing the Church and had a clear interest in alleging that they had been somehow "manipulated" and "psychologically damaged."

Clearly those who leave a religion or any organization are a non-representative sample of all past and current members. See e.g., Galanter, Unification Church ("Moonie") Drop-outs: Psychological Readjustment After Leaving A Charismatic Religious Group, 140 Am. J. Psychiatry 984, 988 (1983) (hereinafter "Unification Church Dropouts") (noting likely animosity of those who leave a group, such as Unification Church). In fact, the great majority of Singer's sample have self-serving reasons to characterize the Church as coercive and to blame it for harm. Many are interviewed only after they have initiated litigation against the Church or therapy with Singer. Christofferson Test at 2770-79 (all individuals upon whom Singer based her conclusion that the Church engages in coercive persuasion were in treatment or litigation) (Ex. E).[11] As one scholar has commented, "Singer's method in hampered by a . . . major problem, namely, that the information she collects about the [groups] does not stand the test of impartiality and objectivity." J. Saliba, Psychiatry And The Cults xxii-xxiii (1987).

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[11] The bias in the litigation context is well-recognized. See, e.g., United States v. Gambler, 662 F.2d 831, 834 (D.C. Cir. 1981).

Even Singer has recognized the limitations of such a sample. She has conceded that self reports of individuals are subjective. Slee Dep. at 141 (Ex. J). Moreover, an article which Singer coauthored criticizes similar methodology used to study allergy patients. Feingold, Singer, Freeman & Deskins, Psychological Variables in Allergic Diseases, 38 Journal of Allergy 145 (1966) ("Singer, Psychological Variables") ("In some studies the diagnosis of allergy depends upon the mere self-description that one is 'allergic'. . . with no attempt to confirm the diagnosis through history, physical findings, or skin testing"). Nonetheless, Singer relies on "mere self-descriptions" of the alleged coercive nature of the Church. She makes no effort to confirm her "diagnosis," either by personally observing the Church's practices or comparing the tales recounted by those who have left the Church to those who remain members.[12] Compare with Galanter, Unification Church Dropouts (comparing those who left Church with sample who had been recruited but not yet joined, sample of active members and sample of general population).

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[12] A comparable study resting solely on current, satisfied Church members would be immediately recognized for its bias and limitations, even -- or particularly -- by Singer. For example, she criticizes Marc Galanter's recent book which draws primarily on responses of current members of groups to a questionnaire, because "[t]here is little or no indication that he has had long-term therapeutic or other contact with former members of even the groups he studied via questionnaires." She states that she is "wary to "express [ ] enthusiasm" for a work that relies on so "narrow and non-representative" a sample. Singer, Book Review of Marc Galanter: Cults: Faith, Healing and Coercion, Cult Awareness Network News (Sept. 1989).

Singer's biased "sampling" techniques and her tautological theory wholly exclude as a possibility the logical and prima facie fact that individuals join and remain in the Church of Scientology because they find personal satisfaction through the teachings and practices of the Church. Nor does she even attempt to deal with the variables which pertain when some individuals voluntarily choose to cease to be Scientologists. Such factors would destroy the closed circle of logic by which Singer finds all who adhere to the religion to be "manipulated' and all who have left, to have been "harmed."

For example, in an analogous context Singer has concluded that the Unification Church's "sophisticated indoctrination techniques," to use her labels, render individuals incapable of exercising judgment; even where individuals have been subject to the Church's influence for little more than two weeks. See Molko v. Holy Spirit Ass'n, 46 Cal.App.3d at 1106, 1108-11, 252 Cal.Rptr. at 128, 130, 131. But, studies of the Unification Church demonstrate that over ninety percent of those exposed to its recruitment practices choose not to affiliate with the Church. See e.g., E. Barker, The Making of a Moonie, 146 (1984); Galanter, Psychological Induction into the Large Group: Findings from a Modern Religious Sect, 137 Am. J. Psychiatry 1575 (1980).[13]

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[13] Singer's "studies" of those institutions she deems coercive fail to account for other contrary data as well. For example, one study, based on a comparison of those in and those who had departed from a so-called "cult," found no impairment in the ability of members to make sound judgments. Ungerleider & Wellisch, Coercive Persuasion (Brainwashing), Religious Cults and Deprogramming, 136 Am.J. Psychiatry 279, 281 (1979). This study not only clearly conflicts with Singer's conclusion that the Church and other religions of which she disapproves (footnote continued)

Because Singer's sample is so skewed, members of her professional community have dismissed her conclusions. See Richardson, Classical and Contemporary Applications of Brainwashing Models: A Comparison and Critique (use of only former members as data "preclude[s] the possibility of drawing valid generalizations"), in Bromley & Richardson, The Brainwashing Deprogramming Controversy (1983). It is as if, to evaluate the institution of marriage, Singer spoke only to individuals in the midst of contentious divorce proceedings, ignoring those who were happily married or who separated amicably, or without observing interactions among any married couples. The validity and reliability of this work would be readily and properly disregarded. So, too, is Singer's.

2. Singer Has Shown No Correlation Between Church Membership and Psychological Harm

Here, as in other cases in which Singer has attempted to testify that the plaintiff was psychologically harmed by some religious or other institution, Singer relies solely on her interviews with the plaintiffs, and does not compare to a relevant control group. As Singer's peers have noted, however, this methodology is insufficient to establish a correlation, let alone a causal relationship, between membership and harm.

(footnote continued)
impair and even preclude members from independent judgment, Christofferson Test at 2726-29, 2927-32 (Ex. E), but its conclusion rests on generally accepted methodology. Singer does not acknowledge, let alone account for, this finding in her work. See generally James, Brainwashing: The Myth and The Actuality, 61 Thought 241, 255 (1986) (emphasizing "implausibility of the claim" that new religions brainwash people, given small percentage of those attending workshops that join and high defection rate).

For the claim that there is even a correlation between Church membership and psychological harm to have validity, Singer would have to compare her sample to a relevant control group in order to establish that these harms occur more frequently in those who have been or are affiliated with the Church than among those in the general population who are comparable in age, economic status and other variables. Compare Gorman Dep. at 169 (Ex. F) (Singer concedes she has no knowledge how those in Lifespring compare to general population), with Galanter, Unification Church Dropouts at 985 (finding mean scores on general well-being schedule of former members "no different from those of the matched sample from the general population").

Not only does Singer concede that such data does not exist, Task Force Report at 17 (Ex. I), she acknowledges the limitations of the data that does exist. For example, in her deposition in Slee in which she asserted that EST's thought reform techniques were a causal factor in Slee's death, Singer stated that "the reports of psychological harm as the result of EST training remain anecdotal." Slee Dep. at 180-81 (Ex. J). Singer states that in "anecdotal" reports, "observers and reporters have gathered cases and presented them as anecdotes to illustrate an offering of either a theoretic or speculative or reporting nature in the professional literature." Id. In so doing she concedes that the data is not gathered in a systematic, scientific manner. Thus by her own statement, such anecdotes could be used to illustrate a claim, but never to prove a theory.

The data about the Church of Scientology is similarly anecdotal: Singer has never endeavored to gather data using a comparison group, to establish in any systematic manner that membership in the Church correlates with harm. Nor has she attempted in any way to address the many studies finding that participation in new religions alleviate psychiatric distress. See, e.g., Richardson, Psychological and Psychiatric Studies of New Religions 209 (summarizing studies) in Advances in The Psychology of Religion (Vol. 11) (Brown, ed., 1985). Accordingly, her theory, even as to correlation, remains speculative at best.

3. Singer Fails to Show that the Church Caused Any Psychological Harm

Even if Singer had established a correlation between membership in the Church and psychological distress, that alone would not support a finding of causation, as Singer's "research designs [do not] control for plausible rival hypotheses." J. Neale & R. Leibert, Science and Behavior: An Introduction to Methods of Research 13-14 (1980); quoted in Monahan & Walker, Social Science in Law, 54-55.

For example, Singer fails to consider whether the alleged psychological distress she purportedly observes in individuals might be explained by pressures they are faced with in their environment. Such an hypothesis is suggested by the finding of scholars in other contexts that members of some new religions experience relief from psychological distress upon joining and that this relief is closely associated with their affinity for and degree of participation in their new religion. Galanter, Cults: Faith, Healing and Coercion, 34-36, 174 (1989); Galanter, Unification Church Dropouts at 988. Similarly, absent comparison with a control group of those who left the Church voluntarily and have not sought counseling, Singer cannot soundly conclude that the experience in the Church, rather than deprogramming (a violent form of forcible extraction from a religious body espoused by Singer) underlies the account of psychological harm.

Singer attempts unsuccessfully to account only for the rival hypothesis that the condition or conditions she observes predated Church membership. She regularly, as she does in this case, relies for assessment of the individual's state prior to affiliation with the institution at issue solely on the accounts of the individual and her or his family, ignoring the obvious bias of former Church members in litigation with the Church, as well as that of their family and friends.[14] Saliba, Psychiatry and the Cults xxiii. See e.g., United States v. Gambler, 662 F.2d 834, 837 (D.C. Cir. 1981). Singer often does not attempt to corroborate the individual's accounts by reviewing medical or other records which predate the individual's affiliation.[15]

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[14] Singer herself, in an article she coauthored addressing court testimony, cautions that a party's reports cannot be accepted at face value and underscores the need to consider the effect of the suit on the person's motivation. M. Singer & A. Nievod, Consulting and Testifying in Court, in Handbook of Forensic Psychology 532 (1987).

[15] The subject's bias is only compounded by Singer's. For example, she began her interviews of the Aznarans in this case only after having concluded years before that the Church of Scientology engaged in coercive persuasion, Christofferson Test at 2779 (Ex. E), a technique that she generally characterizes as producing "psychiatric casualties." See Thought Reform Programs at 190-91. The Molko trial court (footnote continued)

Moreover, when attempting to account for this rival hypothesis, Singer fails to address scholarships supporting the rival hypothesis. For example, she does not in any way account for or refute the finding of at least one scholar who found that the psychological well-being of those who attended a Unification Church workshop was considerably below that of a comparative sample of the general population. Galanter, Unification Church Dropouts at 985-96.

Singer herself, in an article she coauthored, has recognized studies addressing personality factors in allergic disorders as marred because they exhibit the precise flaws that characterize Singer's finding of a causal relationship between Church membership and psychological harm. Singer, Psychological Variables at 144 (Singer criticizes allergy study for failing to consider whether emotional qualities were present prior to illness, or were the result of other unknown third factors).[16]

Singer's finding of causation is similarly flawed. To draw once more on the analogy to the study of marriage, it is as if one concluded, after talking to several people who were unhappy in the midst of divorce, that marriage caused their problems,

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(footnote continued)
assessment of Singer is thus applicable here, namely that Singer "seem[s] to have reasoned backwards from [her] disapproval of [the Unification Church's] methods to the conclusion that Plaintiffs were not thinking freely because they were persuaded by them." Molko, 198 Cal.App.3d 199, 224 Cal.Rptr. 817, 826 n.9 (1986).

[16] Singer has recently attempted to deflect criticism of her methodology by characterizing her conclusions as the product of a "single case study" but to no avail. Such "studies" are in fact only anecdotal reports, the scientific usefulness of which is suspect.

without assessing whether they had been unhappy previously or excluding as a cause of their unhappiness the process of divorce or adjustment to the separation. Not only that, it is as if all accounts of the marriage, in particular the characterization of one another's role in its demise, were accepted at face value.[17]

Neither Singer's methodology nor its rejection by the relevant academic communities has changed since the filing of the APA and ASA amicus briefs or the rejection of the Task Force Report.[18]

Given Singer's skewed samples and lack of any control group, she may speculate that membership in the Church caused certain distress she identifies in the Aznarans and that the Church employs techniques of coercive persuasion, but this speculation has not and cannot, consistent with accepted scientific principles, gain acceptance in the relevant scientific community. Shatkin v. McDonnell Douglas Corp., 565 F.Supp. 93, 95 (S.D.N.Y. 1983) (excluding expert whose opinions were based on "assumptions that are so speculative that they amount to gross conjectures"); see also Richardson v. Richardson-Merrell, Inc., 857 F.2d at 829-33 (finding expert testimony unsupported because of unsound basis for findings of causation). Accordingly, this Court, like the courts in Fishman and Greene, must exclude her testimony.

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[17] Finally, Singer's approach both to her findings of coercion and causation is not amenable to testing and confrontation by other professionals to ensure its validity, as the data has never been published. In fact, not all of the data has even been recorded. Christofferson Test at 2867-69 (Ex. E). However, "[t]he scientific approach requires that all claims be exposed to systematic probe." J. Neale & R. Liebert, Science and Behavior: An Introduction to Methods of Research 13-14 (1980); see also Richardson v. Richardson-Merrell, 857 F.2d 823, 831 (D.C. Cir. 1988) (emphasizing failure of expert to publish or offer study for peer review as factor casting doubt on acceptance), cert. denied, ___ U.S. ___, 110 S.Ct. 218 (1989).

[18] The data that underlies Singer's "study" of the Church of Scientology is no different than that on which the Task Force Report rested. The data that "caught" Singer's attention and thus formed the basis for the Task Force Report discussion of those new religions she disparagingly calls "cults" were nothing other than "knowledge that [she] had gotten from the therapy of a number of individuals that had been in cults or large awareness trainings and . . . that [she] had gathered from certain legal cases that [she] had had contact with," Slee Dep. at 218-19, as well as that reported in literature. The "data" upon which Singer's opinion of the Church rests also consists similarly of "anecdotal reports" derived from a biased sample of individuals seen for therapy or a legal consultation, plus familiarity with some literature.

B. Singer's Theory of Coercive Persuasion Lacks General Acceptance

Singer's theoretical premise, no less than her methodology, lacks general acceptance in the scientific community, as it fails to distinguish the allegedly coercive practices of the Church of Scientology and others she maintains use SMSPI from the myriad of socially acceptable organizations that actively attempt to and even successfully influence behavior. Indeed, Singer's paradigm is more accurately a description of the dynamic process of any group, from a college fraternity to an urban political machine or even a class of law students than it is a useful theoretic analysis of an undefined concept of some special and specific behavior which could be labelled "brainwashing" or "thought reform."

Singer, like Lifton, sees a continuum of influence, set off at one extreme by physical restraint and punishment and at the other by reason, open exchange and other nondirective techniques. Singer, Group Psychodynamics in R. Berkow (ed.), Merck Manual (1987); see also Task Force Report at Figure 1 (Ex. I).[19] Singer's claim -- that she, or anyone for that matter, can identify with accuracy the point on this continuum at which techniques of influence that do not rely on threats of or actual physical force or restraint become coercive -- is fraught with controversy.

First, scholars question whether, absent physical force or threats, influence processes can be labelled as and proven to be coercive, in that they could strip an individual of free will. See, e.g., James, Brainwashing supra, at 254; Barker, Making of A Moonie, supra, at 264-265; Solomon, Programming and Deprogramming the "Moonies": Social Psychology Applied, in The Brainwashing/Deprogramming Controversy 179 (D. Bromley & J. Richardson eds. 1983); Robbins & Anthony, Brainwashing and the Persecution of Cults, 19 J. of Religion and Health 66 (1980); Reich, Brainwashing, Psychiatry, and the Law, 39 Psychiatry 400, 403 (1976).

Even the models studied by Lifton and Schein, which by all accounts fall at or near the extreme of the influence continuum, are of limited effectiveness. Lifton, for example, considering the "accomplishments" of the thought reform program in Chinese prisons in the 1950s, speaks of only six apparent converts. Lifton, Thought Reform 131. Within the universities, Lifton found the most common response to the "program" was that of those he characterized as "adapters" -- those who were "partially but not entirely convinced by the program; essentially [they were] concerned with the problems of coping with a stressful experience and finding a place in a new society." *Id.* at 401. *See also* Schein, The Chinese Indoctrination Program for Prisoners of War: A Study of Attempted "Brainwashing" in Readings in Social Psychology 332 (Macoby, ed. 1988) (characterizing even temporary change in belief as rare and thus program as failure).

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[19] Singer, as do Lifton and Schein, recognizes that influence processes pervade not only those new religions she pejoratively labels cults, but also organizations such as college fraternities, the Armed Forces, mainstream Christian groups, and self-help groups such as Alcoholics Anonymous. Schein, Coercive Persuasion, at 275. Lifton, for example, acknowledges that totalism is a "widespread phenomenon" and notes the prevalence of its elements -- such as milieu control, guilt, shame and confessional, group sanction -- in an array of organizations, including educational, psychological, religious and political organizations, many of which attempt to persuade individuals to adopt and conform to their point of view. Lifton, Thought Reform & The Psychology of Totalism 438-61 (1961).

Second, there is no consensus about how to assess with scientific validity whether an influence process lacking physical force is coercive. The court in Fishman, addressing this problem, stated:

> [W]hen a seemingly fit but harmless beggar asks for money, some people are inclined to give money and others are not. But when a mugger holds a knife at a victim's throat and asks for money, most people give it. . . The Court finds general acceptance within the scientific community (and elsewhere) that armed mugging is sufficiently coercive to overcome an average person's free will. But the proffered testimony in this case

> relates to coercive persuasion without the use or threat of physical force.

743 F. Supp at 719. As the court's example suggests, absent physical force, restraint or threats, the distinction between the techniques of influence deemed acceptable persuasion and those cast as coercive diminish or even collapse. James, Brainwashing, 61 Thought at 255 (failure to limit use of word "coercive" to instances involving the use or threat of physical force "obliterate[s] the distinction between the voluntary and involuntary"); see also Schein, Coercive Persuasion 275 (social pressures in psychoanalysis, revival meetings, fraternities, AA, among others, "can be as coercive as the physical constraints" described in the study).

As stated in Meroni v. Holy Spirit Association, in which the plaintiff, like the Aznarans, sought damages for harm allegedly resulting from affiliation with a newer religious group:

> The claim of brainwashing is based upon the activities ... which as previously noted, are commonly used by religious and other groups, and are accepted by society as legitimate means of indoctrination. They are not classifiable as so extreme or outrageous, or offensive to society, as to incur liability therefor.

Meroni, 119 A.D.2d 200, 506 N.Y.S.2d 174, 178 (1986).

Similarly, the Supreme Court recently rejected an argument that the prohibition against involuntary servitude should encompass "compulsion through psychological coercion." United

States v. Kozminski, 487 U.S. 931, 949 (1988). The Court reasoned that an expansion of the definition to include psychological coercion would bring within the definition "a broad range of day-to-day activity," including coercion by a parent who threatens to withhold affection so as to induce a child to work in a family business; by a political leader who uses charisma to persuade others to work without pay; and by a religious leader who uses religious indoctrination to obtain personal services. Kozminski, 487 U.S. at 949; see also id. at 960 (Brennan J., concurring). Singer's theory asks this Court to expand the basis of liability in precisely the way the Kozminski and Meroni courts rejected.[20]

Guided by scholarly criticism of theories of coercion or brainwashing absent force, this Court, like Fishman, must find that Singer's theory regarding the "coercive persuasion" allegedly practiced by religious organizations "is not sufficiently established to be admitted as evidence in federal courts of law." Fishman, 743 F.Supp. at 719; see also Molko v. Holy Spirit Ass'n, 252 Cal.Rptr. at 130-31 (emphasizing controversy about the very existence of brainwashing and its effectiveness absent physical

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[20] Although the complaint falsely alleges that Vicki Aznaran was briefly restrained while on the Rehabilitation Project Force ("RPF") -- years after she joined the Church, Complaint para. 22 -- Singer's conclusions about the coercive nature of the Church and its effect on the Aznarans do not rely on this alleged occurrence. Rather, according to Singer, the Aznarans had long before been "systematically manipulated" by the Church. See Expert Interrogatory Responses at 8-11 (Ex. B) (recounting early experiences in Church as evidence of undue influence). Moreover, it would be absurd to maintain that this alleged force was integral to the supposed coercion, given that the alleged experience on the RPF prompted the Aznarans' departure from the Church. See Complaint paras. 24-28.

force or restraint).[21]

II. SINGER'S THEORY OF COERCIVE PERSUASION CANNOT, CONSISTENT WITH THE FIRST AMENDMENT, UNDERLIE PLAINTIFFS' CLAIM

Concerted efforts to change the behavior or ideas of others, even when deemed coercive, have consistently been accorded First Amendment protection and thus been immune from tort liability in the absence of physical force or the threat of force. NAACP v. Claiborne Hardware, 458 U.S. 886 (1982) ("Speech does not lose its protected character, however, simply because it may embarrass others or coerce them into action"); see also Organization for a Better Austin v. Keefe, 402 U.S. 415, 419 (1971) ("The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment"). Like the speech protected in Claiborne Hardware, the speech underlying the Aznarans' complaint is designed to entice individuals to participate, to change their patterns, and to identify publicly with that which may be unpopular. However, unlike the speech involved in Claiborne Hardware, the speech alleged to constitute or underlie the Church's "systematic manipulation of social and psychological influence" is protected not only by the speech, but also the religion, clause of the First Amendment.

In fact, numerous courts, including this Circuit, have dismissed similar, if not virtually identical claims involving "brainwashing" or comparable conduct because of the threat these actions pose to religious liberty. In Paul v. Watchtower Bible Tract Society, 819 F.2d 875 (9th Cir.), cert. denied, 484 U.S. 926 (1987), the Ninth Circuit held that the free exercise clause barred tort liability as a result of the Jehovah Witness religious practice of shunning: "No physical assault or battery occurred . . . . Offense to someone's sensibilities resulting from religious conduct is simply not actionable in tort. Without society's tolerance of offenses to sensibility, the protection of religious differences mandated by the first amendment would be meaningless." Id. at 883 (citations omitted).

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[21] See also United States v. Kozminski, 821 F.2d 1186, 1194-95 (6th Cir. 1987), (en banc; id. at 1211 (Krupansky, J., concurring) (characterizing expert's theory of psychologically induced servitude absent forceful physical confinement as a thesis "which has its basis in an unproved hypothesis . . . and which has no acceptance in the scientific field to which it belongs"), aff'd 487 U.S. 931 (1988).

In fact, the process Singer labels coercive has been recognized as essential to or indistinguishable from religious conversion and thus constitutionally protected. See, e.g., Meroni v. Holy Spirit Association for Unification, 119 A.D.2d 200, 506 N.Y.S.2d 174, 177-78 (2d Dept. 1986) (claim of brainwashing failed to state a cause of action because premised on activities "commonly used by religio[ns] . . . [and] accepted by society as legitimate means of indoctrination"); Katz v. Superior Court, 73 Cal.App.3d 985, 986-87, 141 Cal.Rptr. 234, 255-56 (1977) (First Amendment bars inquiry into whether religious affiliation resulted from faith or coercive persuasion, as such a determination would inevitably require questioning of religious beliefs); George v. International Society for Krishna Consciousness, 213 Cal.App.3d 729, 262 Cal.Rptr. 217, 236 (1989) (false imprisonment claim premised on brainwashing "no more than an attempt to premise tort liability on religious practices the Georges find objectionable," and thus barred by the First Amendment); Lewis v. Holy Spirit Ass'n, 589 F.Supp. 10, 12 (D. Mass 1983) (dismissing tort claims premised on alleged brainwashing).[22]

As Paul, Meroni and Katz illustrate, courts and juries, no less than legislatures, cannot burden the free exercise of religion. See Paul, 819 F.2d at 880. Courts have adhered to the principle set forth in Prince v. Massachusetts, 321 U.S. 158 (1944), that "[r]eligious activities which concern only members of the faith are and ought to be free -- as nearly absolutely free as anything can be." Id. at 177 (Jackson, J., concurring). To permit juries to distinguish among conversion practices would frustrate the First Amendment principle that religious faiths be treated alike and surely inhibit religious doctrine. Goldman v. Weinberger, 475 U.S. 503, 511-13 (1986) (Stevens, J., concurring); Paul, 819 F.2d at 883.

Simple consideration of the effect on the Church of Scientology were Singer's theory of thought reform advanced reveals the "pernicious rearrangement" in the relationship between the Church and state that would result and thus the theory's incompatibility with the First Amendment. Rayburn v.

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[22] Molko v. Holy Spirit Ass'n 46 Cal.3d 1092, 252 Cal.Rptr. 122 (Cal. 1988), is neither controlling nor contrary to this authority. The Supreme Court of California in that case failed to dismiss claims that involved allegations that the Unification Church subjected plaintiffs to coercive persuasion only to the extent the claims were premised on deception. 46 Cal.3d at 1116-23, 252 Cal.Rptr. at 135-39. No claim of deception is made in the Aznarans' complaint.

General Conf. of Seventh Day Adventists, 772 F.2d 1164, 1169 (4th Cir. 1985), cert. denied 478 U.S. 1020 (1986). Singer's theory could be invoked by all ex-members of the Church to obtain damages for their participation in the Church. Imposition of tort liability for the beliefs and practices negatively cast by Singer as "sophisticated techniques" of influence would amount to little less than a prohibition of fundamental Church precepts and thus of the Church itself, and would permit a result already found by this Circuit to restrict impermissibly free exercise. Paul, 819 F.2d at 881.

Singer's theory of psychological coercion as applied to religious practices is barred by the First Amendment, as the use of any standard other than physical force to assess conversion practices would impermissibly interfere with the free exercise of religion.

III. SINGER'S BIAS DISQUALIFIES HER FROM TESTIFYING AS AN EXPERT

Singer's predisposition to view certain organizations, which she characterizes pejoratively as "cults," as engaging in thought reform is so great as to strip her of the objectivity essential for her opinion to have the probative value necessary for it to be admissible. Although bias is often an issue going to the weight of the expert testimony, it can reach such proportions as to render the testimony inadmissible. Thus, "where an expert becomes an advocate for a cause, [s]he therefore departs from the ranks of an objective expert witness, and any resulting testimony would be unfairly prejudicial and misleading." Viterbo v. Dow Chemical Co., 646 F.Supp. 1420, 1425-26 (E.D. Tex. 1986), aff'd, 826 F.2d 420, 422-24 (5th Cir. 1987); see also Proteus Books Ltd. v. Cherry Lane Music Co., 873 F.2d 502, 515 (2d Cir. 1989) (affirming finding that witness was not qualified to testify as an expert because he was an interested party in case).

Singer's bias far exceeds that of one who simply testifies repeatedly and even exclusively, for one side in a recurring dispute, a point amply illustrated by one account she has given for the APA's rejection of the Task Force Report. She explains in a declaration "that a Lifespring operative, Leonard Goodstein, and Newton Maloney arranged to have [the] report rejected." Miller Decl. at para. 43 (Ex. D). Similarly, she contends that the APA disbanded the Task Force "because they were having so much pressure from various cultic organizations that they really had not been aware of the amount of pressure and harassment that was going to be put upon them." Gorman Dep. at 20 (Ex. F). Thus, she readily attributes any action disfavorable to her as the work of "cults."

Even more important, her bias has colored her search for and analysis of evidence upon which to form an opinion as to the existence and cause of an individual's psychological harm. As a result, the evidence underlying her opinion that an organization caused a particular stress, in this case as well as others, is "so lacking in probative force and reliability that no reasonable expert could base an opinion on that data." Viterbo, 646 F.Supp. at 1424.[23]

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[23] For example, in Singer's deposition in Slee v. Werner Erhard, she stated that the stress of the EST training program was a causal factor in the plaintiff's death. Yet, Singer (footnote continued)

Singer's prompting and characterization of plaintiffs' statements is so transparent as to amount to little less than coaching. For example, Singer states after listening to Richard Aznaran's account of his life prior to joining the Church:

> So when you went to Scientology you came from a background where you could pretty much trust what people said, that it was you know, just basic American good will and trust.

Interview of February 4, Tape 1 at 12 (Ex. O). However, nothing in Aznaran's previous description suggested Singer's remark, see Ex. O at 9-12, although such a characterization comports with Singer's opinion that those who join the new religions and other organizations she labels "cults" are "trusting."

Throughout the interviews, Singer fails to question the tales as recounted by the Aznarans, instead offering glosses for their statements that support her theory and language to bolster their stories. For example, when telling of his entry in the Church, Richard described the period preceding it, shortly after his return from Vietnam, as "pretty mixed up" and "confusing," stressing that at the time he began his affiliation with the

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(footnote continued)
conceded that she had no knowledge whether Slee had revealed any trauma during the workshop, whether he had been berated or of his general state of mind during the training. Although Slee's death "was the result of something that occurred in his cardiovascular system," she did not know what Slee's normal blood pressure was or whether he suffered from hypertension, nor did she consider it relevant that his father had had a heart murmur. Slee Dep. at 125, 150 (Ex. J). In fact, she had not even read the autopsy report. Id. at 335. Singer's willingness to force facts to meet her preordained conclusion indicates her clear bias and rejection of professional standards.

Church he "was still messed up." Interview of February 4, 1989, Tape 1 at 2-3, 16-17 (Ex. O). Singer, having listened to these statements, asks: "Now were you truly messed up or was it just the normal state that other men that had been in Vietnam felt[?]" Richard responded, "Oh no, it was just normal." Id. at 17. Thus, Singer ignored Richard's prior statements and coached Richard to characterize himself as "normal" by presenting him with the choice only between being "truly messed up" and "normal."

Similarly, after Vicki tells of her shock upon seeing her sister be kind to a retarded man, Singer does not inquire about Vicki's general attitude toward retarded persons, but instead concludes, without basis in the interviews, "They'd [the Church] been able to so detach you from your earlier compassion, your whole view . . ." Interview of February 5 at 38 (Ex. P).[24]

The interviews are also replete with instances in which Singer casts aspersions on the Church or the Aznarans' experiences as abnormal. For example, after Richard describes for Singer the Church's intolerance for a person's delay in responding to questions, Singer states: "You know what strikes me so amazingly is, the more I hear of these examples, the more the desire is to have a zombie-like Manchurian Candidate-like person that obeys without thinking, without delay, and does exactly what the Scientology policy is to be." Interview of July 28, 1989 at 54 (attached as Exhibit Q). See also id. at 17 (coaches Richard to describe the Church as more coercive than the military).

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[24] The exchange around Richard's concentration provides another illustration. Richard described for Singer the difficulty he had had when attempting to go to college soon after leaving the Church. Singer responds: "Yeah, so that your native endowment had already been established as superior, and then you come out and have trouble going to college," on the basis of Richard's statements that he had a high score he obtained on an Air Force test and the ease with which he went through air traffic control school. Interview of February 5 at 26 (attached as Exhibit P), without asking about Richard's prior school experience nor probing about his statements that he "probably didn't really apply [himself] that well" while in high school. Interview of February 4 at 11 (Ex. O).

The self-serving accounts of the plaintiffs, particularly when prompted by Singer, can hardly provide reliable support for the proffered opinion that the Church of Scientology caused plaintiffs harm. The Sixth Circuit's opinion in Viterbo is instructive. In that case, the expert, unlike Singer, at least sought to rely, in addition to the plaintiff's account, on tests that he conducted to support his findings that plaintiff's physical ailments were caused by exposure to a particular pesticide. Having concluded those tests were unfounded or incapable of supporting the conclusion, the court held that plaintiff's statements did not provide the "foundation and reliability necessary to support expert opinion. . . . Indeed, [the] testimony is little more than [plaintiff's] testimony dressed up and sanctified as the opinion of an expert." 826 F.2d at 424. Accordingly, the court affirmed the exclusion of the expert testimony. Id. Singer's testimony, like that of the expert in Viterbo, must be excluded.

IV. THE PREJUDICIAL VALUE OF SINGER'S TESTIMONY, WERE IT ADMITTED, FAR EXCEEDS ANY PROBATIVE VALUE

Even if Singer's testimony were found to have probative value -- which it does not for the reasons set forth above -- it still must be excluded. Singer's proposed testimony that the

Church of Scientology "coercively persuade[d] the Aznarans to blindly adhere to its directives through the creation [of] an identifiable system of control, domination and obedience," see Expert Interrogatory Responses at 17 (Ex. B), is so inflammatory that it would serve only to prejudice the jury against the Church. See Fed.R.Evid. 403. Her theory, set forth by an "expert," does no more than offer legitimacy to negative value judgments about the Church and to a refusal to accept that individuals could choose to adopt the beliefs and way of life of the Church of Scientology. United States v. Amaral, 488 F.2d 1148, 1152 (9th Cir. 1973) (risk of undue prejudice is particularly great with expert testimony because of "aura of special reliability and trustworthiness" surrounding such testimony); see also United States v. Gillespie, 852 F.2d 475, 480 (9th Cir. 1988). Similarly, in this case, Singer's testimony would be extremely prejudicial and thus must be excluded.

CONCLUSION

The court in Fishman held that the issue of whether Singer's unsupported theories fail to satisfy the Frye test "is not one of first impression among the federal courts." Fishman, 743 F.Supp at 718. Indeed, an ever growing body of federal case law has resoundingly rejected Singer's unsupported and prejudicial theories. Guided by the scholarly criticism set forth above and by this overwhelming body of precedent, this Court, like the court in Fishman, in Greene and in Kropinski must reject Singer's theories and exclude the testimony of Margaret Singer from this action.

For all the foregoing reasons, defendants urge that this Court grant defendants' motion to exclude the testimony of plaintiffs' designated expert, Margaret Singer.

Dated: July 29, 1991

Respectfully submitted,

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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN,

Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTER CLAIM

No. CV-88-1786-JMI(Ex)

PLAINTIFFS' OPPOSITION TO MOTION TO EXCLUDE EXPERT TESTIMONY

Date: September 9, 1991
Time: Discretionary
Ct: Hon. James M. Ideman

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I. THE CHALLENGED EXPERT TESTIMONY, IN PART, ADDRESSES THE PSYCHOLOGICAL HARM CAUSED BY SCIENTOLOGY'S CONDUCT TOWARD PLAINTIFFS.

Among other aspects consequent to plaintiffs' involvement with defendants, Dr. Singer will testify to the nature and extent of psychological harm sustained by plaintiffs. See, Defendants' Ex. B, Plaintiffs' First Further Responses to Defendants' Third Set of Interrogatories, at 24-29 ("Expert Responses"). Specifically, Vicki Aznaran suffers from post traumatic stress disorder and a recurrent major depression and Richard Aznaran from a recurrent major depression and dysthemia. Id. at 26-27, 29. Such testimony will facilitate the acquisition of knowledge by the jury and is accordance with a generally accepted explanatory theory. United States v. Amaral (1973) 488 F.2d 1148, 1152. The aforementioned diagnoses are specifically addressed and set forth in the Diagnostic and Statistical Manual of Mental Disorders (3rd Ed. Revised 1987) published by the American Psychiatric Association and thus are in accordance with a generally accepted explanatory theory.

II. THE EXPERT TESTIMONY AS IT APPLIES TO DEFENDANTS' BRAINWASHING OF PLAINTIFFS IS IN ACCORDANCE WITH THAT WHICH IS GENERALLY ACCEPTED BECAUSE AN INGREDIENT OF SUCH BRAINWASHING IS FORCE AND THE THREAT THEREOF. [1]

As set forth in Part I,B of the instant motion, defendants assert that there cannot be a thought reform program in the absence of force. [2] The facts in this case, however, are replete with both threat of force and the actual implementation of force. [3] *See*, Expert Responses at 10-12, 14-24; Plaintiffs' Statement of Genuine Issues [Statute of Limitations, at Fact No. 4.

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[1] It is actually an incorrect use of the term of art to refer to "brainwashing." The term "brainwashing" was first introduced into Western parlance by the reporter, Edward Hunter. Hunter, Brainwashing In Red China (1953) New York: Vanguard Press. One of Hunter's Chinese informants had told him of "hsi nao" which translated into "brain cleansing." The term "thought reform" is a more accurate translation of the Chinese term which describes the process.

The Chinese term for thought reform, **ssu-hsiang kai-tsao**, literally means the remaking or the reconstructing of thought. As "thought" in the Communist vocabulary is practically synonymous with ideology, "thought reform" and "ideological remolding" are almost synonymous. Chen, Thought Reform of the Chinese Intellectuals (1960), Hong Kong: Hong Kong University Press, at 72. Lifton, Chinese Communist "Thought Reform": Confession And Re-Education Of Western Civilians (1957) 33 New York Academy of Medicine 626 ("The Chinese Communists have developed a peculiar brand of soul surgery which they practice with impressive skill - the process of "thought reform.")

For the purposes of this discussion, thought reform, coercive persuasion and brainwashing will be used interchangeably.

The threat of the most extreme sanction, that of being declared a "suppressive person" and being subject to the imposition of the "Fair Game" [4] policy was omnipresent. Also omnipresent was the sanction of being sentenced to the Rehabilitation Project Force and the economic sanction of the "freeloader debt."

Thus, the very ingredient the absence of which defendants would have Dr. Singer's testimony rendered beyond the ken of general acceptability is, in fact, present. The definition set forth in

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[2] See also, defendants' Ex. L (*Amicus* Brief in California Supreme Court at 24-26) and Ex. N (*Amicus* Brief in United States Supreme Court at 8-11) wherein *amici* in the *Molko* litigation assert the position that threat of force is a necessary ingredient of a thought reform program. Defendants make the false claim that the arguments set forth in these briefs were not addressed by the California Supreme Court. Footnote 11 to the *Molko* opinion, cited by defendants, makes no reference to any of the briefs submitted by *amici*. It is limited to arguments submitted by the Moon Church only.

[3] The Court is reminded to carefully consider the arguments made by Scientology, particularly in light of its penchant for omitting unfavorable facts. For example, *see* footnote 2 to Plaintiffs' Statement of Genuine Issues [First Amendment] for an enumeration of certain facts pertaining to the use of force that were omitted by Scientology's selectively skipping pages in citations to alleged sequential pages of Ms. Aznaran's deposition testimony.

[4] Fair Game is a policy to be enforced against "enemies" of Scientology or "suppressive persons." According to the policy, such persons "[m]ay be deprived of property or injured by any means by any Scientologist without any discipline of the Scientologist. May be tricked, sued or lied to or destroyed." *Allard v. Church of Scientology of California* (1976) 58 Cal.App.3d 439, 443, fn. 1; *see also*, *Wollersheim v. Scientology* 212 Cal.App.3d 872, 880, pet. for cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298 (1991) ["Scientology's retribution policy, sometimes called 'fair game.'"]; *Church of Scientology of California v. Armstrong* (7/29/91) 91 Daily Journal D.A.R. 9172, 9174 [Armstrong declared suppressive person, labelled an enemy of the church and subjected to fair game policy.]

Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, cert. denied 490 U.S. 1084 did not require force or threat thereof in order that brainwashing be present. Even under defendants' contention, however, that such force is required, Dr. Singer's testimony stands on its merits. See, United States v. Fishman (N.D.Cal. 1990) 743 F.Supp. 713, 718-19 (Physical coercion required in order to brainwash); Defendants' Ex. A, Greene v. Maharishi Mahesh Yogi (D.D.C. 1991) No. 87-0015 at 12-14 (same) and contrast, Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872, 880 (Dr. Singer testifies how Scientology's practices were comparable to brainwashing and thought reform aggravating plaintiff's mental illness).

Since the use of force, as well as the threat thereof, is an integral ingredient of the scheme by which Scientology dominated plaintiffs, Dr. Singer's opinions that such domination was the consequence of a thought reform program is in accordance with what is a generally accepted explanatory theory.

III. THOUGHT REFORM IS A SPECIES OF UNDUE INFLUENCE AND AS SUCH DOES NOT REQUIRE THE USE OF FORCE, OR THREAT THEREOF, IN ORDER TO DOMINATE PLAINTIFFS' WILL SO AS TO MAKE IT SCIENTOLOGY'S POSSESSION.

A. Introduction.

The tone of defendants' contentions is that Scientology did not employ any force, or threat thereof, on the Aznarans. The tone of defendants' contentions also appears to disregard the fact that Dr. Singer's opinions are based upon what was the Aznarans' specific experience.

Defendants characterize what they label Dr. Singer's "theory" as something that she had conjured up out of the ether. In fact, Dr. Singer has been a student of thought reform for almost 40 years. See, e.g. Strassman, Thaler [Singer] & Schein, "A Prisoner of War Syndrome: Apathy As A Reaction To Severe Stress" 112 American J. of Psychiatry (1956) 998. [5]

Scientology would have this Court order that Dr. Margaret Singer not to testify because what has been labelled her "theory" does not satisfy the requisites of Federal Rule of Evidence 702; it is not a generally accepted explanatory theory.

The entire thrust of defendants' assault, however, is not upon Dr. Singer. Rather, the focus of this concentrated attack is directed at the postulate that in order to subject an individual to undue influence, force or the threat thereof is not necessarily an essential ingredient. In this light, the actual focus of the instant motion is not directed at Dr. Singer. It is directed at the conceptual proposition that an individual can be forced to do that which otherwise he would never do without any threat of violence whatsoever. By its argument Scientology would strike from human experience, from the English language, and from the annals of jurisprudence, any notion that individuals can be the subject of and vulnerable to manipulation by the use of fraud and the imposition of undue influence. The suggestion is, of course, ludicrous, and ignores common law principles so basic that they have long be codified. [6] Nonetheless, the means of implementing the premise

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[5] A copy of Dr. Singer's curicullum vitae is submitted as Plaintiffs' Exhibit A.

[6] The essential elements which must be present in order to find a legal consent are that such consent must be (1) free, (2) mutual and (3) communicated by each to the other. California (continued...)

requiring "a gun at the head" has been quite effective. Plaintiffs submit that the ultimate objective is to discredit the landmark case which has reverberated through the halls of First Amendment jurisprudence: Molko v. Holy Spirit Association (1988) 46 Cal.3d 1092, cert. denied 490 U.S. 1084.

Molko stands for a number of profound legal principles. It affirms the right of the individual to be free of fraudulent and coercive schemes, the implementation of which would usurp his sovereign capacity for self-reliance - the ability to reason and the capacity to exercise an informed consent - and the independent exercise of free choice. It stands for the proposition that an individual's independent exercise of free choice can be captured and controlled by an outside agency without the person's knowledge or consent, and that such usurpation can be accomplished by fraud and by undue influence - without any threat of force. Finally, Molko stands for the proposition that the ascription of religious status to such an usurping organization shall not result in its immunization from accountability for the consequences of such intrusive and totalistic conduct.

The reason that Margaret Singer is an effective expert is because she can explain in plain, everyday, common-sense English, the intricacies of the manner in which fraud and undue influence interrelate to subvert the volition of the victim without his or her knowledge or consent. Even though the notion of fraud is basic to

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[6] (...continued)
Civil Code § 1565. Consent that is apparent is not actually real or free when it has been obtained through (1) duress, (2) menace, (3) fraud, (4) undue influence or (5) mistake. California Civil Code § 1567. Fraud is defined in California Civil Code § 1572. Undue influence is defined in California Civil Code § 1575.

human experience and to the law, sometimes it is so complex and sophisticated that it requires the explanation of an expert to make it clear. "The law does not define fraud; it needs no definition; it is as old as falsehood and as versable as human ingenuity." Weiss v. United States (5th Cir.1941) 122 F.2d 675, 681.

B. Undue Influence Requires No Threat Of Force To Be Effective.

The California Supreme Court held that the deceptive recruiting practices of the Moon Organization (Unification Church), the very same practices which in a conservatorship setting a lower California court deemed to have been violative of the First Amendment, [7] constituted fraud and undue influence. The Molko court's definition and use of brainwashing demonstrated that the Court considered it to be the functional equivalent of undue influence.

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[7] The lower California appellate court case is, of course, Katz v. Superior Court (1977) 73 Cal.App.3d 985. It was primarily upon the Katz decision that the trial court and court of appeal rested their respective analyses in Molko. See, Order Granting Summary Judgment filed October 23, 1983, San Francisco Superior Court No 769-529 at 17-20. Attached hereto as Exhibit A; Court of Appeals decision in Molko v. Holy Spirit Association (1986) 224 Cal.Rptr. 817, 826-28. The California Supreme Court reasoned that the rationale articulated in Katz did not apply to the situation in Molko. The court stated:

> "The Katz court faced a legal question markedly different from that now posed: it considered whether a court could determine if an asserted religious conversation 'was induced by faith or by coercive persuasion.' (Katz v. Superior Court, supra, 73 Cal.App.3d at p. 987, 141 Cal.Rptr. 234.) In other words, the Katz court had to decide whether a court 'question the validity' of a person's stated belief because someone *else* claimed that person was brainwashed. (Ibid.)
>
> "Again in contrast, the legal question here does *not* require a court to determine whether anyone's faith, current *or* past, is or was real. As stated above, Molko and Leal do not question the Church's beliefs. Neither do they challenge the 'validity' of their former faith; they state quite plainly that their erstwhile beliefs in the Unification Church were sincere. The legal question is simply whether a religious organization can be held liable on a traditional cause of action in fraud for deceiving non-members into subjecting themselves, without their knowledge or consent, to coercive persuasion.
>
> " The Court of Appeal held that although Katz was different in certain ways, its analysis compelled the conclusion that to consider plaintiffs' fraud claims would require 'questioning the authenticity

(continued...)

The Supreme Court defined the techniques of brainwashing as follows:

> "The specific methods of indoctrination vary, but the basic theory is that brainwashing 'is fostered through the creation of a controlled environment that heightens the susceptibility of a subject to suggestion and manipulation through sensory deprivation, physiological depletion, cognitive dissonance, peer pressure, and a clear assertion of authority and dominion. The aftermath of indoctrination is a severe impairment of autonomy and [of] the ability to think independently, which induces a subject's unyielding compliance and the rupture of past connections, affiliations and associations. [Citation.]"

Molko, 46 Cal.3d at 1109. The court also defined undue influence as follows:

> "Undue influence is 'the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority

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[7] (...continued)
and the force' of the Church's teachings. We disagree. The challenge here, as we have stated, is not to the Church's teachings or to the validity of a religious conversion. The challenge is to the Church's practice of misrepresenting or concealing its identity in order to bring unsuspecting outsiders into its highly structured environment. This practice is not itself belief - it is conduct 'subject to regulation for the protection of society.' (Cantwell v. Connecticut, supra, 310 U.S. at p. 304.) Molko, 46 Cal.3d at 1116-17.

Simply, the arguments submitted by Sceintology in the case at bar are recapitulations of those made during the course of the Molko litigation, at trial and on appeal all the way to the United States Supreme Court. As they were rejected before, they should be rejected now.

> over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.' (Civ. Code, § 1575.) Stated another way, undue influence is 'that kind of influence or *supremacy of one mind over another* by which that other is prevented from acting according to his own wish or judgment' [citation.][italics added by Supreme Court]; it occurs when 'one party uses [its] dominant psychological position in an unfair manner to induce the subservient party to consent to an agreement to which he would not have otherwise consented.' [citation.]"

Id. 46 Cal.3d at 1124.

In consequence of undue influence/brainwashing Molko "lost his ability to make independent decisions as a result of being deceived into submitting unknowingly to coercive persuasion . . . there is a triable issue as to whether, by means of the alleged deception, the Church established and used its dominant psychological position and its confidential relationship with Molko 'for the purpose of obtaining unfair advantage over him' with regard to [the money they paid for courses and auditing].'" *Id*. 46 Cal.3d at 1125.

The *Molko* litigation, particularly in the California and United States Supreme Courts, specifically addressed the question whether brainwashing necessarily required force, or threat thereof, in order to be effective. [8] As a review of defendants' exhibits L and N will show, the same arguments which were rejected by the

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[8] See, defendants' Ex. L (*Amicus* Brief in California Supreme Court at 24-26) and defendants' Ex. N (*Amicus* Brief in United States Supreme Court at 8-11.) Neither high court found these arguments persuasive. The California Supreme Court reversed the holdings of the trial court and the Court of Appeal, that had been predicated upon *Katz*-type arguments. The United States Supreme Court denied certiorari.

California and United States Supreme Courts are being advanced again in this Court.

"Any species of coercion, whether physical, mental, or moral, which subverts the sound judgment and genuine desire of the individual, is enough to constitute undue influence." In re Bible Speaks (Bkrtcy.D.Mass. 1987) 73 B.R. 848, 858-59; see also, Nelson v. Dodge (1949) 68 A.2d 51 (undue influence imposed by spiritual advisor).

C. The Postulate That Brainwashing Does Not Require Threat Of Force Is Consonant With The Classic Studies In The Field

In the 1950s certain shocking events occurred in Hong Kong. American Prisoners who suddenly had been released from Chinese prisons appeared at the border at Hong Kong "looking calm, fit and sane. They praise their captors, praise Communism, and damn 'Yankee Imperialism.' It is said that their old acquaintances are amazed, and that their political attitudes seem to have 'changed completely.'" Hinkle & Wolff, Communist Interrogation And Indoctrination of "Enemies of the State" (1956) 76 Archives of Neurology and Psychiatry 115, 163, hereinafter Communist Interrogation and Indoctrination.

Upon their release from China, the former prisoners set about a process of reality testing. Without committing himself, each newly released man characteristically began to talk to friends, and to listen to accounts of what happened while he was away in prison. He began to read. He began to compare what was told to him in prison with the facts as they were observed and reported in the American Press. Within a few months he had readjusted himself to the outside world and resumed a set of beliefs roughly similar to those he held prior to his imprisonment. Many became bitterly anti-Communist. Id. at 165.

A thorough treatment of the procedures which can implemented for the purpose of causing a person to embrace what he once rejected and to reject what he once embraced is far beyond the scope of this brief. However, Scientology has asserted that the concept, incorrectly translated from the Chinese, called "brainwashing," refers to something no more substantial than to pejoratively refer to one who has been persuaded to adopt an opinion with which he who would apply the term disagrees.

The Aznarans disagree. They do not believe that the procedures to which the term refers are innocuous. They believe that those procedures are real and can be identified by the consistent form they take. They do not believe that the procedures are content-specific. They believe that one who wishes to establish a social system of control based upon the application of those procedures can implant almost whatever ideas he chooses.

Although a comprehensive study on the phenomenon is beyond the scope of this brief, the Aznarans believe more than a superficial discussion is necessary because of the total assault Scientology has unleashed upon their expert witness. By means of the discussion to follow, the Aznarans hope to communicate not only the nature of the process, but that knowledge of this process has been available for 40 years.

There are three primary cultural sources of first-hand information concerning the method and procedures designed to "manipulate human thought or action against the desire, will or knowledge of an individual" Encyclopedia Britannia Micropodia (1975)

Chicago, Vol. II at 229 - in other words, to alter the way an individual relates to himself and the world around him. They are Russian, Chinese and Korean. "Reports from all these sources confirm each other to such a degree that they create considerable confidence in the general picture that emerges from them." Frank, J.D., Persuasion and Healing (Revised Ed. 1974) New York: Schoken Books (Copyright 1961 The Johns Hopkins University Press.)

The method seems to have originated in connection with certain research arising in conjunction with experiments performed on dogs by the Russian neurophysiologist I.P. Pavlov. W. Sargant, The Battle For The Mind, (1957) Greenwood Press, at 31. Pavlov discovered that dogs could be classified as to four basic types of temperament which roughly corresponded with the four temperaments the ancient physician Hippocrates identified in man. Each temperament that Pavlov identified bore a relationship to two fundamental responses to the imposition of conflict and stress - aggression and passivity. He found that by passing a weak electrical current through the leg of a dog, or by causing a metronome to beat at a certain particular rate at the same time the dog was fed, he could condition the dog to reflexively respond (which was manifested by the secretion of saliva) to the stimulus as a signal it was going to be fed shortly thereafter. A dog could be conditioned positively, and negatively as well. He found that such conditioned reflexes were a function of the brain because when the dog's brain cortex was removed, it would swallow when food was placed in its mouth, but would not respond to the stimulus to which it had previously been conditioned. He discovered that he could create stress in a dog by increasing the voltage of the electric current applied to its leg, by prolonging the period between the food signal and the delivery of the food, and by giving positive and negative signals one after the other. When the stress applied became too great for the dog, it would begin to break down and manifest peculiar, abnormal behavior. The behavior that would occur, as well as the amount of stress required to produce it, were contingent upon the temperament of the particular dog to which the experiment pertained. The most passive dog would start to break down almost right away. Stronger dogs would require greater stress, but after they were broken down, they were harder to sedate. The difference in temperaments was so great that to sedate a dog of the strongest temperament which had been broken down required a dose of sedative 5 to 8 times greater than that required for the dog of the weakest temperament of exactly the same body weight.

In the course of his experiments concerning conditioned reflexes and the imposition of stress, Pavlov found that the breakdowns that occurred were located in the brain. In order to protect itself from damage due to nervous stress, the brain would go into inhibition, or break down. Depending upon the temperament of the dog, and on the amount of stress applied, Pavlov discovered he could elicit dramatic changes in canine behavior. In the initial phase of protective brain inhibition, the dog would refuse to eat. In the most advanced phase of protective inhibition, the positive conditioned responses would suddenly switch to negative ones; and the negative ones to positive. The dog might then attach itself to a laboratory attendant whom it had formerly disliked, and try to attack the master it had previously loved. Sometimes the dogs would go into hypnotic states. The changes in the level of brain inhibition could be measured with some precision by the amounts of saliva secreted in response to conditioned food stimuli. Always, the ability of a dog to resist heavy stress would fluctuate according to the state of its nervous system and general health.

Toward the end of his life, Pavlov started to apply his discoveries about dogs to research in human psychology. Id. at 31-42. Pavlov's experiments on dogs have been suggested to be analogous to human behavior. When the brain breaks down under stress, the resultant behavior changes depend upon the individual's inherited temperament and on the conditioned behavior patterns he has built up in gradual adaptation to the environment, in both man and animal. Id. at 92.

Although there are those who would disagree, others have stated that it is accepted "by Soviet theorists that just as animals can be trained and conditioned, so can man" and that "human speech is a conditioned reflex activity." Pavlov spoke of "stimuli of the first order, which condition man directly, and stimuli of the second order, with weaker and more complicated conditioning qualities." In the so-called "second signal system" verbal cues replace physical stimuli. Speech belongs to the second signal system wherein first the tone and the sound have a conditioning quality, and later the symbolic and semantic meaning. Meerloo, Pavlovian Strategy As A Weapon of Menticide (1954) 110 American Journal of Psychiatry 809-810,

> "Pavlov had discovered that, more than in animals, man's relation to the external world is dominated by secondary stimuli, the internalized speech symbols. Man learns to think in the speech figures given to him . . . 'Language is the means of man's adaptation to the environment.'. . . 'Speech manifestations represent conditioned reflex functions of the

> human brain.' . . . man . . . is conditioned to catchwords, verbal stereotypes, slogans, formulas and symbols. Pavlovian strategy means imprinting prescribed reflexes on a mind that has been broken down . . . The system starts with verbal conditioning and training by combining the required stereotypes with negative or positive stimuli such as pain, hunger or a reward. The range of negative stimuli consists of "physical pressure, moral pressure, fatigue, hunger, . . . boring repetition, confusion created by seemingly logical syllogisms. And when the victim asks for logical sense or personal understanding and reacts with intelligent protest he has to be broken down systematically. He is told that he is betrayed . . . nobody is there any more to help him . . . He is alone and helpless. Guilt and fear are provoked alternately, and he receives rewards when he speaks and acts the right way. . . This kind of Pavlovian strategy arouses in everybody a confusion . . . a general feeling of unreality. It leads gradually to complete mental submission and willingness to play any role."

Id. at 810.

Such a strategy "destroys free thought and makes servile, mechanical instruments of [an individual's] thought processes." Meerloo, The Crime of Menticide (1951) 107 American Journal of Psychiatry 594, 595. There is a school of thought among those who have studied the methods that can be used to control human behavior, particularly the method developed by the Chinese. This school regards man as "a social animal" whose "health is as much dependent upon satisfactory relationships with his associates as it is upon his food and drink." It asserts the existence of a "sort of psychological

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modus vivendi leading to a degree of acceptance that is necessary for any man who exists in a group of other men" which, if absent, will result in "profound disturbance." Communist Interrogation And Indoctrination, at 159. The individual man can be considered "as a living system entirely dependent upon maintaining a satisfactory relationship with his total environment." In order maintain a relationship with the environment that feels satisfactory, he needs the acceptance of other people. Otherwise, he will feel that something is wrong with his environment. When he feels that there is something wrong with his environment, within him unpleasant feelings arise, "which stimulate him to take whatever action is necessary to bring them to an end." Id. at 169-170. The "social ecology" surrounding a person can be manipulated so as to become an "assault on the self" of a targeted individual. Sarbin and Adler, Self-Reconstruction Processes: A Preliminary Report (1970) 57 Psychoanalytic Review, 608.

The methods of interrogation and indoctrination that were used in Communist China in the 1950s were in many respects similar to those of the Russian state police, from which they were in part derived. However, in some respects they were different because of the special needs and traditions of the Chinese. Communist Interrogation and Indoctrination at 173; Hinkle and Wolfe, The Methods of Interrogation and Indoctrination Used By The Communist State Police (1957) 33 New York Academy of Medicine 600, 602 (hereinafter "Methods of Interrogation and Indoctrination.")

The Chinese Communist form of the strategy was more closely related to psychotherapy than its Russian counterpart. "In particular, it relies less on physical torture than on psychological pressures, especially the manipulation of group forces . . ." Persuasion and Healing at 90. In the "revolutionary colleges" through which the Chinese intellectuals were processed, force simply was not used

> "It would be a mistake to think of the thought reform of the intellectuals as similar to the brainwashing of prisoners. The confessions of prisoners or political offenders have been exacted by physical as well as mental torture. **No physical torture was ever used in the thought reform of the intellectuals.**"

(emphasis added) Thought Reform of the Chinese Intellectuals at 71.

In the setting surrounding the Chinese intellectuals, there was a complete lack of privacy, an unremitting routine of self-criticism sessions, group-discussion sessions, rote learning, constant repetition of Communist viewpoints and the repeated rewriting and rejection of autobiographical essays. The group exploited the feeling of emotional nakedness and unworthiness which the self-criticism sessions produced. The group focused upon items obtained from the individual's life history which caused feelings of guilt, conflict and anxiety to arise in him. These feelings were magnified when the group rejected, isolated and reviled him because of his "improper" attitudes and past behavior. He was placed in a situation in which he could not avoid having his past life reviewed and questioned and could not avoid hearing an exposition on the Communist position. The group rewarded and approved the individual when he was cooperative and behaved in accordance with their aims, and in that way indicated to him that the only possible solution to an intolerable situation was to accept the "proper" point of view. Communist Interrogation and

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Indoctrination at 173-174.

The story of the Chinese intellectuals who underwent indoctrination at a "revolutionary college" is particularly pertinent in that, as mentioned, "they were not subjected to the physical hardships that tend[ed] to obscure the psychological features of the process . . . ." Persuasion and Healing at 90. (emphasis added) Moreover, since "[I]nflicting pain is not a necessary nor particularly effective method of inducing compliance" Biderman, Communist Attempts To Elicit False Confessions From Air Force Prisoners Of War (1957) 33 New York Academy of Science 616, 618, the procedures were developed as a means to ensure that certain people, as well as at one point in history practically the entire population of mainland China, would be reliably obedient.

The processes involved can be grouped according to three interrelated aspects -- extreme emotional arousal, total milieu control, and the interrogation. The methods "attempted to produce an intense, disorganizing emotional state in their subjects, to cut them off as completely as possible from all social supports of their previous world view, and to immerse them in a social milieu that consistently and uniformly represented the Communist one." Persuasion and Healing at 91.

The revolutionary college drew its student body from among former Nationalist officials and teachers under the old regime, from Communist Party members who had displayed "errors" in their thinking or activities or who had spent lengthy periods of time in Nationalist territory, from student returning from studies in Western countries, and from arbitrarily selected groups of university instructors or recent graduates. Members of these groups apparently matriculated in response to strong "suggestions" or thinly veiled threats that they attend. However, others actively sought admission on a voluntary basis in order to meet the survival requirements of the new regime, or at least learn what was expected of them in the future. Brownfield, C.A., The Mind Benders: A Study Of The Effects Of Isolation (1972) New York: Exposition Press, p. 39, hereinafter The Mind Benders.

The colleges were rigidly organized. A single institution which could accommodate up to 4000 students, was subdivided administratively into sections of 1,000 each, then further into classes of 100 to 200, and ultimately into six-to-ten man discussion groups. Id.

> "Thought reform must be carried out through thought struggle. Anyone who is willing to learn . . . must be prepared for a strenuous struggle between his new and old ideologies. The old things in this world cannot be expected to die of themselves, they fall only under the struggle and the blows of the new. . . . It would be difficult for them to change without the criticism and encouragement of people close to them and without an ideological inner-struggle of their own. Therefore, the study of Marxism-Leninism should be considered as revolutionary work in the realm of thought and a battle assignment in the realm of thought. In order to complete this revolutionary task and fulfill this ideological war, the skilful use of the most important weapons - criticism and self-criticism - is of impelling necessity."

Thought Reform of the Chinese Intellectuals at 73.

The broad objective of the program was the "liquidation of non-

Marxist and anti-Marxist ideas and the dissolutions of anti-Communist attitudes. Id. The individual was expected to "wage a relentless struggle against his own past and set patterns of thought. He must virtually destroy himself for a new self to be born. The ideological conversion comes after the individual has been brought to see how unworthy [is] his past and how necessary [is] a new life, with a new outlook and a new 'standpoint.'" Id. at 74. An additional and more important reason for the Communist insistence on ideological correctness was because the "Communist revolution was a 'total revolution', which aimed to bring about radical changes in the entire social structure and in the pattern of human behavior. It set out to replace the old way of life with a new 'working style', and to substitute new allegiances for old loyalties, and to introduce a new code of personal and social ethics." The most important dimension to the overall Communist reform that was implemented was "ideological reform." Id. at 9.

The central theme of the implementation of thought reform indicated it to be "as a **physically nonviolent** but coercive set of psychological manipulations put in the framework of a **morally right, uplifting** and **therapeutic** experience." The Mind Benders at 41. The result was "made possible by **isolating individuals from the supports and rewards of their previous milieu and then exerting group pressures upon them to adopt new, socially reinforced substitute norms.**" (emphasis added) Id.

The students who entered these schools were isolated from the rest of society. They were put through an **unremitting program** of study and physical work, which occupied **every moment of their waking hours** and left them with **no time for reflection**. Old methods of

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thought, behavior and **value systems were devalued** in conjunction with the use of **self-criticism** and group-criticism techniques accompanied by **exhaustive lectures** on Communism. The emotional fervor of the group was kept at a high pitch by the stimulation of intense competitiveness and the organization of "moves" and "drives" from which no student could shrink because of **group pressure.** Communist Interrogation and Indoctrination at 167.

The most effective indirect compulsion has been found to come from group pressure. The group is the "medium through which the Communist Party or the state controls the people; though the control is sure and firm, it is nevertheless indirect; and the Party **can claim that the individual submits** to the majority of his group and the procedure is 'democratic.'" (emphasis added) Thought Reform of the Chinese Intellectuals at 75.

Each student was a member of a group the members of which studied, ate and lived together. Group pressure was brought to bear on the individual. The students challenged one another in the spirit of criticism and self-criticism so that each might learn "to use political theoretical study as a weapon for analyzing and criticizing his own thought." Id. at 19. Leaders of the group "set examples of ideological conversion or 'revolutionary action' and endeavor[ed] to create an atmosphere in which the lukewarm or indifferent members feel the heat to move with the group." Id. at 75.

The mass meetings and rallies aroused the emotions and set the stage for thought reform, but the real job of "soul searching", of "examining" one's own background and one's own thoughts was done in small groups. In such small groups

". . . the 'positive elements' 'help' each individual to see his

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past errors, to muster 'courage' to confess before his comrades, and to declare his determination to mend his ways. In this process of 'free' discussion in small groups, day in and day out, the individuals are caught off their guard and are **led to reveal their inner thoughts.** It is extremely difficult not to do so in the long sessions which continue until everyone comes to speak his mind. The Communists do not accept neutrality or indifference, and refusal to speak is considered a hostile act. If there is no 'freedom of silence' in Communist China there is **compulsory** 'freedom of speech' from which none are exempted." (emphasis added) Id. at 76.

The purpose of criticism [9] in discussion groups was of crucial importance: (1) it immediately discouraged any tendency toward unorthodox or nonconformist ideas of action; and (2) it served to point out the insincere, "false progressives," i.e., the students who on the surface expressed entirely "correct" and conforming views but who lacked true conviction. Members of the group looked for indications of lack of real emotional involvement in others, each feeling the need to prove the reality of his own reform by making a public show of personal enthusiasm and actively participating in the

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[9] The 'small group' usually consists of no more than ten or fifteen persons, and is further subdivided into 'mutual aid study groups' of three or four persons each. It may be engaged in the study of Marxist theories or in the discussion of current events or in the examination of individual 'thought conclusions' growing out of 'study.' In each and every instance, every member is given his turn to talk. The group analyses the thought of each person and 'exposes' his errors. This, it is said, is the 'democratic way.' Moreover, it is an expression of 'collective living,' and to refuse to participate is to commit the offence of 'alienating one's self from the group.' In essence, this is the technique of criticism and self-criticism. The group criticizes the individual and helps him to criticize himself. Members criticize one another and they criticize themselves." Id. at 77.

criticism of others. Moreover, this was an entirely acceptable way of avoiding being criticized for "failure to combine theory with practice."

Everyone was made to feel guilty in varying degrees because he had, at least once in the privacy of his own thoughts, rejected one or another of the principles and precepts of communist ideology; the disconcerting part was that such thoughts seemed to show outwardly despite the conscious effort to suppress them. The Mind Benders at 40.

One was expected to receive the criticisms gratefully and with grace in the spirit that such criticisms were honest efforts on the parts of critics to help correct faulty thinking. The student who was criticized, as a good group member, was expected to anticipate, welcome, and expand on the criticisms, thus establishing the self-criticism process. Extensive, in-depth analyses of one's self in minute detail was required, and this included current thoughts and behavior as well as those of those of the past - every experience pertaining to family, education and intimate inter-personal relationships. Id. at 42.

In the context of the discussion groups, there was a certain biasing, or redefinition of the language used therein. Terms like "liberation," "help," "progress," "the people," "proletarian," "bourgeois," and "capitalistic" became morally charged, both positively and negatively; they assumed a magical quality in and of themselves. It became difficult, using such jargon and loaded concepts, to frame issues or conceive of problems in any way other than the way the Communists conceived of them. Id. In the Group for the Advancement of Psychiatry Reports (1957) R.J. Lifton stated that "catch phrases and semantic manipulation are so prominently developed that the student must find himself thinking and conceptualizing within their sphere."

> "Using the pattern of words for so long, you are so accustomed to them that you feel chained. If you make a mistake, you make a mistake within the pattern. Although you don't admit that you have adopted this kind of ideology, you are actually using it unconsciously, almost automatically. . . . At that same time I believed in certain aspects of their principles and theories, but such was the state of confusion in my own mind that I couldn't tell or make out what were the things I did believe in."

Id. at 246-247.

As a natural consequence of self-criticism, the student began to confess within the small group to the "evils" and "transgressions" of their lives. Moral and political values became infused with each other so that thoughts and actions were negatively classified as "reactionary," or positively regarded as "progressive." The Mind Benders at 42-43.

With the passage of time, more and more "progressives" and "activists" took an aggressive leadership role. If a group was not progressing along the general plan of the thought reform, or if the group leaders were not doing their jobs well, they were replaced or reshuffled by their superiors. Id. at 43.
This insured that every leadership position was occupied by a reliable "progressive."

The term "confession" describes "the various forms of personal testimonies which the intellectuals were asked to submit as evidence of their reform progress." Thought Reform of the Chinese Intellectuals at 59. It is an autobiographical document and in order to be acceptable, was required be complete, having no gaps which left a part of the past concealed. Not to be a mere chronicle, it had to reveal the individual's personal reactions to his past and each important episode of his life. Id. It was required to contain a definite pledge to make "clean break from the unsavory past, with a determined effort to 'study' Marxism-Leninism and the ideology of the proletariat revolution. It must promise a new start in life, a fresh resolution to take part on the 'people's revolution' under the guidance of the Communist Party." Id. at 60.

The focal point of the indoctrination process was the interrogation, which had individual and group forms.

> "The general strategy of both was to obtain as much information . . . as possible, including the apparently innocuous and irrelevant, and **use it to undermine his own assumptive world and prevail upon him to adopt the Communist one.** . . Since wrong thoughts as well as wrong deeds were crimes, the confession included . . . [all] attitudes and motives and their sources . . . All of this had to be expressed in such a way as to demonstrate his complete and unqualified acceptance of the Communist world view." (emphasis added)

Id. at 96.

The confessions were used to foster public sentiment so as to encourage other intellectuals "to follow the same path of ideological conversion." Id. at 60-61. Since the Communists want a collective society, they preach collective living. The individual must submit to the group, and obey the organization. Consequently, a specific target

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of the thought reform was the individualism of the intellectuals. Personal needs and personal interests should be subordinate to the needs of the state and the "people." Id. at 66-67.

The strategy of indoctrination forced

> "the person to participate actively in bringing about his own change of attitude . . . each group member had to demonstrate the genuineness of his reform through continuous personal enthusiasm and active participation in the criticism of his fellow students . . . The Chinese apparently believed that **if they could get a man to participate** . . . eventually **he would accept the attitudes which the participation expressed.**"(emphasis added)

Persuasion and Healing. (internal citations omitted) at 99.

The material to be inculcated in the strategy of thought reform was repeated over and over again. "Most of the techniques used gained their effectiveness by being used in this repetitive way until the prisoner could no longer sustain his resistance." Id. (internal citation omitted) at 100. With regard to the intellectuals, it was said again and again that unless they 'remake' themselves they will not be of any use to the new society." Thought Reform of the Chinese Intellectuals at 79. "If the confessions shatter the self-esteem of the intellectuals, it is a necessary step in their ideological conversion."

> "Individualism is a central target of attack. The new way of life is the collective life. The **methods of thought reform utilize group pressure.** To the group the individual bares his thoughts in self-criticism and confessions. He must tell all without any reservation. He must not have nay secrets. Inasmuch

> as the 'group' is always **directed by capable manipulators** and the acme of group life or collective life is the Party or the state, the replacement of individualism by collectivism means in the last analysis the **total surrender of the individual to the Party or the state. Once this has been accomplished, thought reform will have been complete."**

(emphasis added) Id.

> ". . . Communism requires a person to give up his all to serve the proletarian-socialist revolution and recognizes no middle course, no neutral position; **one is either an active supporter or an enemy**. Its 'ideological remolding' demands a complete break with the past and a new start. The emotions of self-degradation and disgust pave the way to self-destruction and rebirth as a 'new person.'

(emphasis added) Id. at 188.

In the process of becoming such a 'new person' "freedom of thought" is destroyed, Id. at 191, because, as often stated, thought reform's "real objective is always the complete surrender of the individual to the Party and the state." Id. at 194. "Under the ceaseless pressure for more 'study' and more 'self-examination' no peace of mind is left to anyone." Id. at 195.

The use of language became burdened with the "double-talk" of the Communists. "They talk democracy but practice dictatorship; they stress voluntarism and exercise compulsion; and they preach freedom while they exercise rigid control. Theirs is the double-talk of the democratic dictatorship, the people's democratic state, and freedom of speech in a people's democracy." Id. at 201.

Under the relentless pressure of hard work, fatigue, increasing demands, groups pressures, criticisms, doubts and ridicule, the majority of students ultimately reached a point at which they went through an **emotional crisis** associated with tears and depression. Most found themselves able to make the necessary adaptation by reorienting their value systems and identifying themselves with the Communist group. A religious fervor and a feeling of "conversion" frequently accompanied this emotional breakdown and recovery. His new Communist fervor and group identification continued as long as the student remained an active member of his class group. Communist Interrogation and Indoctrination at 167.

Through the techniques described above, the Chinese revolutionary colleges perfected the techniques of gaining access to the inner self of the student, primarily through the discussion group, and manipulating that access through total control of the environment surrounding the student. The manipulated interplay between the inner man and the outer environment had the effect of a bellows exerting pressure to heat the fire of inner conflict in the student.

> "Prolonged misery, frustration and uncertainty tended to dull . . . critical faculties and weaken their capacity to withstand the continual and ubiquitous pressures to adopt the Communist world-view. The Chinese immersed the . . . student completely in an 'airtight communication system' characterized by a highly charged morality and an absolute doctrinal authority for the 'correctness' of any solution or point of view."

Lifton, R.J., Thought Reform of Chinese Intellectuals: A Psychiatric Evaluation (1957) 13 Journal of Social Issues 5, 14. It permitted him to receive or send communications only in terms of this system.

"Input" from the outer world was severely reduced and systematically manipulated to weaken his ties with his former groups. Communist literature was the only available reading matter. . . All incoming and outgoing mail was read, and only those communications allowed to pass in either direction that would estrange [him] from his loved ones or worry him about them.

> "The Communists also attempted to make all the . . . students' 'output' conform to their world view. Communications that indicated acceptance of the Communist position were rewarded, while all others were rejected. **Prolonged, severe conflict between inner beliefs and outer behavior is hard to stand, so the enforcement of behavioral conformity tends to eventually bring about changes in one's belief system to harmonize with it.**
>
> Measures were designed to **prevent the formation of ties** among prisoners that would strengthen their ability to resist. (emphasis added)

Persuasion and Healing at 94.

When Americans who had been held by the Chinese returned to this Country, many spent time in a hospital ward. Their behavior contrasted starkly with other American soldiers. Their behavior was startling testimony to the effectiveness of the Chinese isolation procedures.

> "Most of the ex-prisoners stayed on the wards - less than 5% asked for passes to go to town, and those who did go went alone. They formed no groups, did not play cards and stayed as much by themselves as they could. But they talked compulsively and incessantly to the treatment personnel and seemed unable to evaluate whether the things they said about each other might be

harmful or not.

The clinical impression of apathy and personal isolation in most of the prisoners was borne out by their performance on psychological tests. The **outstanding characteristic** of the stories they made up to explain neutral pictures that they were shown was the **rarity of interaction and feeling.** Their interpretations of ink blots, which often reveal hidden attitudes and feelings, were described as showing varying degrees of apathy coupled with strong pent-up aggressive-destructive feelings."

(emphasis added) Singer, M.T., & Schein, E.H., Projections Test Responses of Prisoners of War Following Repatriation (1958) 21 Psychiatry 375.

In short, the Chinese "evolved a means of isolating every person emotionally from every other person, permitting each to turn only to the system for guidance and friendship." Persuasion and Healing, at 95.

However successful was thought reform in producing false confessions, "its ability to produce sustained attitudinal change seemed to be very small unless the new attitude was constantly reinforced by the group . . . Even the extreme pressures of thought reform seem unable to produce long-lasting changes unless they are sustained by subsequent group support." Id. at 101-102. [10]

Applying the foregoing discussion to the facts of the Aznarans' personal experience in Scientology as set forth in Plaintiffs' Appendix of Fact in Opposition to Motions for Summary Judgment, it is

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[10] See also, Lifton, Thought Reform and the Psychology of Totalism, (Norton, 1963), Chapter 22 at 419-37, Schein, Coercive Persuasion (Norton, 1971) 117-67.

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clear that what Scientology practiced on the Aznarans was coercive persuasion. It is clear that based upon the foregoing that there is no practical difference between coercive persuasion and undue influence. [11] Based upon the foregoing, it is also clear that force, or threat of force, is not necessary for the implementation of a thought reform program, even though such force and threats are present in the case at bar.

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[11] "Undue influence, . . ., is a shorthand legal phrase used to describe persuasion which tends to be coercive in nature, persuasion which overcomes the will without convincing the judgement. [citation.] The hallmark of such persuasion is a high pressure, a pressure which works on the mental, moral or emotional weakness to such an extent that it approaches the boundaries of coercion. In this sense undue influence has been called overpersuasion. [citation.] Misrepresentations . . . of fact are not essential to the charge, for a person's will may be overborne without misrepresentation. . . . While most reported cases of undue influence involve persons who bear a confidential relationship to another, a confidential or authoritative relationship between the parties need not be present when the undue influence involves unfair advantage taken of another's weakness or distress. [citations.] [¶] . . . To make a good contract a man must be a free agent. Pressure of whatever sort which overcomes the will without convincing the judgement is a species of restraint under which no valid [decision] can be made. Importunity or threats, if carried to the degree in which the free play of a man's will is overborne, constitute undue influence, although no force is used or threatened. **A Party may be led but not driven, and his acts must be the offspring of his own volition and not the record of someone else's.** [¶] In essence undue influence involves the use of excessive pressure to persuade one vulnerable to such pressure, pressure applied by a dominant subject to a servient object. In combination the elements of undue susceptibility in the servient person and the excessive pressure by the dominating person make the latter's influence undue, for it results in the **apparent will of the servient person being in fact the will of the dominant person...**

"Whether from weakness on one side, or strength on the other, or a combination of the two, undue influence occurs whenever there results 'that kind of influence or supremacy of one mind over another by which that other is prevented from acting according to his own wish or judgement, and whereby the will of the person is overborne and he is induced to do or forebear to do an act which he would not do, or would do, if left to act freely. (Webb v. Saunders, 79 Cal.App.2d 863, 871.)" (emphasis added) Odorizzi v. Bloomfield School District (1966) 246 Cal.App.2d 123, 130-132. Direct evidence of undue influence "is rarely obtainable and, thus the court is normally relegated to determination by inference from the totality of facts and circumstances. . . . Indeed, there are no fixed definitions or inflexible formulas. Rather, we are concerned with whether from the **entire context** it appear that one's will was overborne and he was induced to do or forebear to do an act which he would not do, or would do, if left to act freely." (emphasis added) Keithley v. Civil Service Board (1970) 11 Cal.App.3d 443, 451.

(continued...)

IV. MARGARET SINGER'S WORK ON THOUGHT REFORM HAS NOT BEEN REJECTED BY HER PEERS.

Scientology makes the misleading claim that Dr. "Singer's work not only lacks acceptance, but has been resoundingly rejected by her peers." (Defendants' Motion at 7.) This statement is flatly incorrect. As revealed by the American Psychological Association's sworn answers to written interrogatories, the following is correct:

1. The A.P.A. holds no position, one way or the other, whether or not the expert testimony on "coercive persuasion" in Molko should or should not have been admitted into evidence.
2. The A.P.A. holds no position, one way or the other, with respect to whether the methodologies employed by plaintiffs' experts in Molko have been repudiated or not by the scientific community due to the use of "undocumented and biased sources."
3. The A.P.A. holds no position, one way or the other, with respect to whether the methodologies employed by the plaintiffs' experts

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[11] (...continued)
As a general rule, overpersuasion can be identified by certain characteristics which tend to create a pattern. The general characteristics include the following elements, not all of which need be in effect in order for overpersuasion to be present.
"(1) discussion of the transaction at an unusual or inappropriate time,
(2) consummation of the transaction in an unusual place,
(3) insistent demand that the business be finished at once,
(4) extreme emphasis on untoward consequences of delay,
(5) the use of multiple persuaders by the dominant side against a single servient party,
(6) absence of third-party advisers to the servient party, . ."
Odorizzi, 246 Cal.App.2d at 132-133. The undue susceptibility to such overpersuasive influence may be the product of physical or emotional exhaustion or anguish which results in one's inability to act with unencumbered volition. Keithley, 11 Cal.App.3d at 451.

in Molko have been repudiated by the scientific community because those methodologies failed to show causal links between membership in the defendant organization and observed psychological harm.

4. The A.P.A. holds no position, one way or the other, as to whether the conclusions of the plaintiffs' expert in Molko are generally recognized as scientific conclusions in the relevant professional communities.

5. The A.P.A. holds no position, one way or the other, as to whether plaintiffs' theory of coercive persuasion offered in Molko, if applied by the courts, would infringe upon First Amendment guarantees.

6. The A.P.A. does not know whether or not the views expressed in the *amicus curiae* brief filed on behalf of defendants in Molko in the California Supreme Court contains views which are shared by a majority of the membership of the American Psychological Association.

7. The A.P.A.'s "BSERP concluded that sufficient information was not available to permit BSERP to endorse the theory of 'coercive persuasion' set forth in the [task force] report."

Plaintiffs' Exhibit C, Ruehle v. Lifesping, Inc., United States District Court for the Southern District of New York, Deposition Upon Written Questions propounded to The American Psychological Association. Thus, while Dr. Singer may not as of yet have enjoyed the endorsement of the A.P.A., her work on coercive persuasion has not been rejected either. [12]

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[12] The theory of coercive persuasion enjoys greater acceptance than defendants are willing to recognize. In the DMS-II-R, the (continued...)

It is curious that the Fishman court would rely upon a professional association in order to determine whether or not something was generally accepted in a particular professional community. Few lawyers would agree that the American or California Bars set the standard of what is the acceptable practice of law. It would seem that when the Fishman court deferred to what it incorrectly understood to be the position of the A.P.A. on the subject of coercive persuasion, it not only assumed a definiteness that did not exist, it was incorrect as well. See, Gianelli, "The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half-Century Later," 80 Columbia Law Review 1197, 1210-11. [13]

It may be that Margaret Singer is not biased, but precisely accurate. If so, there is good reason for Scientology to want to exclude her testimony. If not, the matter goes to the weight of her opinions, not to their admissibility. In any event, her testimony will not violate the First Amendment. See, Plaintiffs' Opposition to Defendants' Motion for Summary Judgment [First Amendment].

In light of the law as it is set forth in Molko, Wollersheim amd Bible Speaks, it is clear that the probabtive value of Dr. Singer's

---

[12] (...continued)
guidebook of the community of mental health professionals, § 300.15 at 277, states that a Dissociative Disorder Not Otherwise Specified may include "(5) dissociated states that may occur in people who have been subjected to periods of prolonged and intense coercive persuasion (e.g., brainwashing, thought reform, or indoctrination while the captive of terrorists or cultists)." Plaintiffs' Exhibit D. See also, The Merck Manual of Diagnosis and Therapy (1987) Chapter 136, Group Psychodynamics, subsection Cults at 1467-71 (authored by Dr. Singer). Plaintiffs' Exhibit E.

[13] As to methodology, it would be impossible to ethically conduct an experiment whereby techniques of coercive persuasion were imposed upon a subject without his knowledge or consent. Indeed, to do such a thing would violate federal law. See, 46 Code of Federal Regulations § 46.116 (General requirements for informed consent for Protection of Human Research Subjects).

testimony would far exceed any prejudicial effect that could result therefrom. The prejudice in this case comes from the facts. The facts come from the way that Scientology abused Richard and Vicki Aznaran.

Finally, it is ironic that Scientology is seeking to suppress evidence of brainwashing when as long ago as 1955 L. Ron Hubbard stated we "have brain-washing technologies in our hands," Exhibit F, Declaration of Gerald Armstrong re letter from L. Ron Hubbard to Federal Bureau of Investigation dated 9/7/55, and less than one year later boasted "We now know more about psychiatry than the psychiatrists. We can brainwash faster than the Russians (20 secs to total amnesia against three years to slightly confused loyalty." Id. Hubbard Communications Office Technical Bulletin dated 7/22/56.

CONCLUSION

Based upon the foregoing points, plaintiffs' respectfully submit that defendants' motion to exclude the testimony of Dr. Singer should be denied.

DATE: August 26, 1991

HUB LAW OFFICES

FORD GREENE
Attorney for Plaintiffs

PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: PLAINTIFFS' OPPOSITION TO MOTION TO EXCLUDE EXPERT TESTIMONY; PROPOSED ORDER

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California: SEE ATTACHED SERVICE LIST

[X]	(By Mail)	I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
[ ]	(Personal Service)	I caused such envelope to be delivered by hand to the offices of the addressee.
[ ]	(State)	I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
[X]	(Federal)	I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: August 26, 1991

AZNARAN vs. SCIENTOLOGY

Service List

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Attorney for Plaintiffs
VICKI J. AZNARAN and
RICHARD N. AZNARAN

RECEIVED
AUG 30 1991
HUB LAW OFFICES

FILED
CLERK, U.S. DISTRICT COURT
AUG 26 1991
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

HUB LAW OFFICES
FORD GREENE, ESQUIRE
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SAN ANSELMO, CALIFORNIA 94960-1949
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN, Plaintiffs, vs. CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al., Defendants.	No. CV-88-1786-JMI(Ex) **DECLARATION OF FORD GREENE OPPOSING MOTION TO EXCLUDE EXPERT TESTIMONY** Date: September 9, 1991 Time: Discretionary Ct: Hon. James M. Ideman
AND RELATED COUNTER CLAIM	

FORD GREENE declares:

1. I am an attorney licensed to practice law in the Courts of the State of California, am admitted to practice in this Court, and am the attorney of record for Vicki J. Aznaran and Richard N, Aznaran, plaintiffs herein.

2. I have attached true and correct copies of the following documents as exhibits in opposition to defendants' motion to exclude testimony of plaintiffs' designated expert, Margaret Singer:

Exhibit A - Curriculum vitae of Margaret Singer.

Exhibit B - Order Granting Summary Judgment, filed October 21, 1983, in Molko v. Holy Spirit Association, San Francisco Superior Court No. 769-529.

Exhibit C - Answers, served May 30, 1990, to Deposition Upon Written Questions propounded to The American Psychological Association in Ruehle v. Lifespring, Inc., United States District Court for the Southern District of New York, No. 89 Civ. 7679 (GLG).

Exhibit D - Excerpt from the "Diagnostic and Statistical Manual of Mental Disorders" (3rd Ed. Revised 1987).

Exhibit E - Excerpt from "The Merck Manual of Diagnosis and Therapy" (15th Ed. 1987).

Exhibit F - Declaration of Gerald Armstrong.

Exhibit F1 - Letter dated September 7, 1955 from L. Ron Hubbard to the Federal Bureau of Investigation.

Exhibit F2 - Hubbard Communications Office Technical Bulletin dated July 22, 1956.

Under penalty of perjury pursuant to the laws of the United States, I hereby declare that the foregoing is true and correct except as to those matters stated to be on information and belief, and as to those matters, I believe them to be true.

Executed this 26th day of August, 1991, at San Anselmo, California.

FORD GREENE

HUB LAW OFFICES
Ford Greene, Esquire
California Bar No. 107601
711 Sir Francis Drake Boulevard
San Anselmo, California 94960-1949
Telephone: (415) 258-0360

Attorney for Plaintiffs
VICKI J. AZNARAN and
RICHARD N. AZNARAN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN,

Plaintiffs,

vs.

CHURCH OF SCIENTOLOGY OF CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTER CLAIM

No. CV-88-1786-JMI(Ex)

DECLARATION OF GERALD ARMSTRONG IN OPPOSITION TO MOTION TO EXCLUDE EXPERT TESTIMONY

I, GERALD ARMSTRONG, declare:

1. I was a Scientologist from 1969 to 1981 and held many organizational positions during that period. I was also the defendant in an action entitled Church of Scientology vs. Armstrong, in Los Angeles Superior Court. Judge Breckenridge's opinion in that case was affirmed by the California Court of Appeal on July 29, 1991.

2. Throughout 1980 and 1981 I was L. Ron Hubbard's biographical researcher and archivist. During that period I read

and studied his letter dated September 7, 1955 to the Federal Bureau of Investigation and I provided a copy of it to writer, Omar V. Garrison for his use in a biography of Hubbard. A true and correct copy thereof is attached hereto as Exhibit 1.

3. While I was a Scientologist I read and studied L. Ron Hubbard's Technical Bulletin of July 22, 1956. It was published in the 1970's in bound volumes of Hubbard's "technical" writings and has continued to be published in later volumes up to the present time. A true and correct copy is attached hereto as Exhibit 2.

Under penalty of perjury, pursuant to the laws of the United States I hereby declare that the foregoing is true and correct. Executed this 26th day of August, 1991, at San Anselmo, California.

GERALD ARMSTRONG

EXHIBIT 1

RON HUBBARD, D.D., PH.D.

(51)

4187

Box 242
Silver Spring, Md.
Sept. 7, 1955

TO THE FEDERAL BUREAU OF INVESTIGATION
Communist Activities

Gentlemen: L. Ron Hubbard

A series of sudden insanities and disturbances in Dianetic and Scientology groups reached seven last week on the West Coast.

In Atomic Energy's Richland, Washington a young boy who had never been treated with Dianetics or Scientology but whose father Verne McAdams is the local Scientology group leader in Richland suddenly and mysteriously became insane, so suddenly and so thoroughly that the head of the institution for insane in Richland, evidently of good security, suspects the use of LSD, the insanity producing drug so favored by the APA. Two of our ministers in that area at my request went further into the situation and by means we will not detail recovered from the boy information of which his family had been entirely ignorant. On instructions to find the "other psychiatrist" our ministers by this means located an unsuspected one in Atomic Energy's front yard, a man who had been the construction company doctor during the building of Richland and who had then turned psychiatrist and whose name strangely enough is Menkowski (sp?). The boy had evidently had some association with this man before this sudden onset.

00-79

With this information not yet cool long distance from San Francisco Bay Area notified us of the sudden and inexplicable descent into insanity of one Wanda Collins. She is ravingly insane and yet was completely sane a day ago. Her people and our people cannot account for a missing nine hour period just before this onset. You should be interested in this because Wanda Collins resigned from the Communist Party some time ago, foreswore it and tried to make amends with Scientology and would be a logical candidate for an LSD attack.

SEE REVERSE SIDE FOR ADD. DISSEMINATION.

RECORDED-104

Concurrently with this in Phoenix Arizona

INDEXED-104 20 SEP 1955

58

SEP 20 1955

A29

A-29

our Mr. Edd Clark was suddenly arrested"for practising medicine without a license", and this is very odd because he is the first Dianeticist or Scientologist in five years of world wide operation to be so accused. He could not have been practising medicine because Dianetics and Scientology seek only to assist able people to improve their talents and have no interest in sickness or insanity. He was arrested and without any search warrant all his papers and letters were seized even down to blank typewriter paper and were carried away, a fact which places this matter quite solidly in the field of the F.B.I.. Mr. Clark is a half-blind deaf old man. He was once a chiropractor but has long since ceased to be one. He was told by the County Attorney that the County Attorney meant to "get to the bottom of this thing about Hubbard and Scientology."

The "bottom of the thing" can be found in "Who Knows and What" and "Who's Who in the East" in the local library or from bookstores which carry my books. My own life is about as hard to investigate as a white rock on a summer's day.

It is not uncommon in the past five years to have judges and attorneys mad-dogged at about what a terrible person I am and how foul is Scientology. Persons never named or available step in, spread violent tales and accusations and vanish. This mad-dogging has evidently been done at this County Attorney to prompt such a foolish action. This makes the third civil official in that area to go off half-cocked about Scientology. When it is all done and Scientology has been neatly ruined by the newspapers in the area and when all the charges have been quashed there is no one from whom any recompense can be drawn. "It was all a mistake"...

In 1950 the Dianetics Foundations were violently attacked and discredited. The 200 Foundation employees, when screened, yielded 35 Communist-connected persons. That done the commotion stopped. After three quiet years in the Phoenix area we forwarded to the Defense Department data on brain-washing. Instantly

(51)

we became the subject of violence. Four people were seized by psychiatrists in that area to date and to this day so far as I know are still being held, their sanity shattered.

After we so informed the Defense Department about brain-washing technologies in our hands and offered them, we have been in a state of siege. Understand that we accuse the D.D. of nothing.

Psychiatrists as far north as Seattle have said they were "out to get every Scientologist." An Internal Revenue official has used those very words before witnesses and said he was going to get to the bottom of this thing in Phoenix. People in suspicious condition were sent from one place in Southern California to be "treated by Scientology" for insanity and yet we have no interest in treating anyone, especially the insane. Now two more people go suddenly and inexplicably insane in widely different places both the same way. All manner of defamatory rumors have been scattered around about me, questioning even my sanity which is fortunately a matter of good record with the Navy as by statement "having no psychotic or neurotic symptoms whatsoever."

I have a wife and three little kids. I have a good many thousand people scattered around the world trying to help their fellow man and I am responsible for these people. I am trying to turn out some monographs on matters in my field of nuclear physics and psychology for submission to the government on the subject of alleviating some of the distress of radiation burns, a project I came east to complete. This lawless and brutal attack on Scientology now spreading evidently to three states will probably not end until a great deal of injustice and human suffering has occurred.

Would you please discover for me or for yourselves the exact names and whereabouts of the persons whose statements inflamed the County Attorney in Phoenix in arresting a half-blind old man and seizing all his books and papers. If we have those names and if we trace them back we will have someplace to start on this madness

(51) 4189.1

which now reaches into three states. Can you do this for us?

I am getting additional copies of the material which was offered to the Defense Department since that agency has not acknowledged or returned anything shipped to it about brain-washing and when I have these copies I will send one to you for this is the only starting place I know about for this outbreak and the matter, while far from conclusive at least tells me that something went astray which was dangerous in the wrong hands.

Could you please have your Phoenix office obtain the names of the people who defamed us to the County Attorney? Your Bay Area and Richland offices have already been apprised of the incidents in those areas.

L. Ron Hubbard

22

HUBBARD COMMUNICATIONS OFFICE
217a Kensington High Street, London W.8

RUSH July 22nd, 1956

To U.S. ONLY Julia Lewis, Dick Steves, L. Ron Hubbard, Jnr.

To England ONLY Association Secretary (Jack Parkhouse)
Director of Processing (Ann Walker)
Director of Training (Dennis Stephens)

Staff Auditors, Instructors and Auditors close to Operation only.

TECHNICAL BULLETIN OF 22 JULY 1956

I feel the urge to communicate to you the best news since 1950.

I have whipped the problems of the whole track and memory of the past and can resolve the worst cases we have ever had. That is a huge statement *but* I have solved and can untangle in an intensive the problems of the vacuum and havingness plus memory and health and have just done so. Hence the exuberance.

Also, other auditors can solve these in a case as well. NIBS has just cracked two six-year-standing Black Fives using some of this material and Herbie Parkhouse has had considerable luck with solids.

We are now capable of solving Book One style cases to the extreme level of clear.

No wild burst of enthusiasm is here intended. I have to put the finishing touches on a lot of things and the process is still slow—25 to 75 hours. But I've now done it and seen it done to worse cases than any you've had. And that's fact!

Okay. It's not simple. It requires a minute understanding of Book One. It would take me 50 pages to explain all I've lately found about vacuums. You haven't seen the last of me or of study, but you will have seen the last of unsuccessful cases providing only that we have time and environment in which to audit them.

We can make homo novis. (AND give a grin to those who kept standing around bleating, "Where are the clears?")

We know more about life now than life does—for a fact, since *it* was reaching, *we* can communicate about the reactions.

The process is concerned with "making it solid" combined with effects. It isn't easy. It is wonderfully complex and delicate. But it *has* been done. And it is being done.

Our cases gained but sometimes slumped. Why? Because an electronic vacuum restimulated on the track after sessions, and robbed the case's havingness.

A vacuum isn't a hole. It's a collapsed bank. Every lifetime bank is collapsed into a vacuum.

The formula is—

1. Run pc on start-change and stop for *hours* until he is under auditor's control, in session and (often) exteriorized.
2. Then run him with commands "What are you looking at?" "Good." "Make it solid."

   He will eventually hit a vacuum. (He'd hit it faster on "Recall a can't have" but it's too fast.) Here's the tangle. The vacuum is a super-cold mass or an electric shock. This "drank up" bank electronically (brainwashed him). The energy drunk turned black. Hence black cases. (Does not apply only to black cases however.)
3. Run, interspersed with solids and "objective can't have" on the room, "Tell me an effect object (that drank bank) could *not* have on you," and "Tell me an effect you could have on object." Object may be electrodes or supercold plate or even a supercold glass.

Caution, handle one vacuum at a time. These vacuums go back for 76 Trillion years. They were the original brainwash thetans did to one another, then psychiatrists (on the whole track) did expertly (modern psychiatrists are *punks*, modern shock too feeble to do more than restimulate old vacuums).

Take the vacuum that comes up running solids, or even "Recall a can't have", whatever it is and solve it as above.

This is delicate auditing. If you restimulate a vacuum too hard, the whole track groups on it.

Read Book One. Add vacuums instead of word groupers, use above and you'll probably get through to success. Nibs did and I had given him less than you have here. Of course, he's one of the best auditors in the business, so go easy. And Herbie Parkhouse is no slouch.

CAUTIONARY

This is true—

1. We have created the *permanent* stable clear.
2. In creating him we have a homo novis in the full sense, not just an Operating Thetan.
3. We now know more than life. An oddity indeed!
4. We now know more about psychiatry than psychiatrists. We can brainwash faster than the Russians (20 secs to total amnesia against three years to slightly confused loyalty).
5. We can undo whatever psychiatrists do, even the tougher grade from away back. We can therefore undo a brainwash in 25 to 75 hours.
6. We can create something better than that outlined and promised in Book One.

BUT

1. We need to know more and be more accurate than ever before about the time track and auditing. I have not given a thousandth of what I know about this.
2. We have a new game but also new responsibilities amongst men.
3. This data in the wrong hands before we are fully prepared could raise the Devil literally.
4. Because we know more than the Insanity Gang, we're not fighting them.
5. Because we can undo what we do, we must retain a fine moral sense, tougher by far than any of the past.
6. We can create better than in Book One now *only* if we know Book One and know our full subject.

AND WE DO NOT YET KNOW ALL THE SAFETY PRECAUTION TO BE USED.

I will be giving this data in full at the Games Congress, Shoreham Hotel, WASHINGTON, D.C., August 31st, to September 3rd, 1956.

The exact regimen of this will be SLP 8 and will include the total picture of separating valences from bodies (which must still be done by the auditor, a formula I now have).

I have given you this data in this bulletin at this time because now I know I know and I want you to share in seeing the surge of vision which will be our future.

L. RON HUBBARD

P.S. (Actually, contrary to rumor, it *hasn't* all been done before. If it had been, the guy who is saying it has would be clear!)

4192

FILED
JUN 23 1992
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

RECEIVED
JUL 10 1992
HUB LAW OFFICES

cc Dr. [illegible]
7-11-92
Ha

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and RICHARD N. AZNARAN,

Plaintiff(s),

v.

CHURCH OF SCIENTOLOGY, et al.,

Defendant(s).

CV-88-1786-JMI (Ex)

ORDER RULING ON ALL REMAINING PENDING MOTIONS

cc client
7-14-92
Ha

ENTERED
JUN 25 1992
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

IT IS HEREBY ORDERED:

The Court having read and considered all pending motions, the oppositions thereto, and all supporting documents filed therein hereby makes the following rulings:

Defendants CHURCH OF SCIENTOLOGY, et al.'s (hereinafter "Defendants") motion for an Order confining Plaintiff's theories of recovery as stated in the Joint Status Report is hereby DENIED.

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

Defendants' motion to strike the papers filed by Joseph Yanny and request for sanctions is hereby DENIED as MOOT (See this Court's Orders filed July 24, 1991 and August 30, 1991).

Defendants' motion for a separate trial of the affirmative defenses of release and waiver is hereby DENIED.

Defendants' motion to exclude the testimony of Plaintiff's designated expert Margaret Singer is hereby DENIED.

Defendants' motion to dismiss Plaintiffs' Complaint with prejudice is hereby DENIED.

Defendants' motion for summary judgment based on the statute of limitations is hereby DENIED.

Defendants' motion for summary judgment pursuant to the First Amendment is hereby DENIED.

Defendants' motion to seal the prior settlement agreement is hereby DENIED as it was filed after the motion cut-off date set forth in this Court's Orders of August 9, 1991 and August 30, 1991.

Defendants' motion to dismiss Plaintiffs' claims and for entry of default as to Defendants' counterclaims is hereby DENIED as it was also filed after the motion cut-off date set forth in this Court's Orders of August 9, 1991 and August 30, 1991.

Plaintiffs' ex parte application for an Order which vacates and resets the trial date to include a command to David Miscavige to appear at the new trial date ad testificandum is hereby DENIED. The parties are hereby directed to make the necessary arrangements to subpoena their own witnesses.

Defendants' Notice of Plaintiffs' Non-Compliance with mandatory pre-trial procedures and requests for sanctions are hereby DENIED as MOOT (See this Court's August 30, 1991 Order).

IT IS SO ORDERED.

DATED: 22 Jun 92

JAMES M. IDEMAN
United States District Judge

NAME OF MEDIA ORGANIZATION: CNN (Cable News Network) INDIVIDUAL SUBMITTING REQUEST: John Mcmanus ADDRESS 50 California Street, Suite 950 San Francisco 94111 TELEPHONE NO.: 415 434 1661	FOR COURT USE ONLY 4195 FILED MAR 20 1992 HOWARD HANSON MARIN COUNTY CLERK By A. Cooper, Deputy A Cooper
NAME OF COURT: Marin County Superior Court STREET ADDRESS Dept. 4 MAILING ADDRESS San Rafael, Calif. CITY AND ZIP CODE BRANCH NAME	
NAME OF JUDGE: Judge Michael Dufficy	
NAME OF CASE: Scientology vs. Armstrong	
REQUEST TO CONDUCT FILM AND ELECTRONIC MEDIA COVERAGE AND ORDER	CASE NUMBER No. 152229

1. **TYPE OF PROCEEDING**

☐ Criminal *(specify charges)*:

☒ Civil *(specify type, e.g., personal injury, domestic relations, etc.)*:

2. **PORTION TO BE COVERED** (e.g., bail hearing, preliminary hearing, particular witnesses at trial, sentencing hearing):

3. **DATE OF PROPOSED COVERAGE:**

March 20, 1992

RECEIVED
APR 1 1992
HUB LAW OFFICES

4. **TYPE OF COVERAGE**

☒ TV camera and recorder
☐ Still camera
☐ Motion picture camera
☐ Audio
☐ Other *(specify)*:

5. **SPECIAL REQUESTS OR ANTICIPATED PROBLEMS** *(specify)*:

CERTIFICATION

I certify that if consent is granted to conduct film and electronic media coverage in this case, all personnel of this media organization will abide by the provisions of rule 980, California Rules of Court, and any restrictions imposed by the court.

Date: March 20, 1992

John McManus
(TYPE OR PRINT NAME)

John McManus
(SIGNATURE)

CNN SF Assignment Manager
(SUPERVISORY POSITION IN MEDIA ORGANIZATION)

ORDER

The request to conduct film and electronic media coverage is

☐ granted.
☐ denied.
☐ granted subject to satisfactory pooling arrangements being made.

Date: March 20 1992

(SIGNATURE OF JUDGE)

Form Adopted by the Judicial Council of California
MC 500 (New July 1, 1984)

REQUEST TO CONDUCT FILM AND ELECTRONIC MEDIA COVERAGE AND ORDER

Cal. Rules of Court, rule 980(b)(1)

SUPERIOR COURT OF CALIFORNIA, MARIN COUNTY

ATE: 3/20/92 COURT MET AT 9:05 Am DEPARTMENT NO. 4

RE NT: HON. Michael B. Dufficy, JUDGE A Cooper, DEPUTY CLERK

Margaret Cordova, REPORTER Al Wong, BAILIFF

ITLE: Church of Scientology of International vs. Gerald Armstrong, et al	COUNSEL: Andrew Wilson Laurie Bartilson Graham Berry Ford Greene

ATURE OF PROCEEDINGS: Motions

ACTION NO. 152229

This matter comes before the Court on the following motions:

1. Motion to Dismiss/Stay + Tranfer to L.A.
2. Motion to Intervene
3. Application by Mr. Hertzberg to address this Court.
4. Protective Order
5. Motion for Preliminary Injunction
6. Evidentiary Hearing
7. Motion for Sanctions

Appearances as noted above.
The Court hears argument re media filming.
Filming is allowed.
Argument re transferring matter to L.A. (Defense argument)
Argument re preliminary injunction (plaintiff argument)
Mr. Hertzberg addresses the Court re previous ruling of jurisdiction + venue.
Argument in opposition by Mr. Greene
Mr. Berry presents argument + joins with Mr. Greene (T.R.O.)
Mr. Wilson argues to restain the defendant re T.R.O.)
Submitted.

MINUTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF MARIN

ATE 3/20/92 AT 9:05 AM, Dept. 4 CONTINUE

BBREVIATED TITLE Church Of Scientology vs. Armstrong, et al ACTION NO. 15222

The Court makes the following order,

Change of Venue is granted. The Court will Allow the T.R.O. to remain in effect for an additional 45 days to allow all counsel time to file in L.A. County. The remainder of the motions will be presented + argued in L.A. County. Mr. Wilson to prepare order.

4198

FILED
CLERK, U S DISTRICT COURT
MAY 27 1992
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

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Attorneys for Defendants and Counter-Claimants
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JOHN NELSON, HARVEY HABER, VIVIEN ZEGEL AND DEDE REISDORF

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RELIGIOUS TECHNOLOGY CENTER, a California corporation, et al.,

Plaintiffs,

vs.

ROBIN SCOTT, an individual, et al.

Defendants.

RELIGIOUS TECHNOLOGY CENTER, a California corporation, et al.,

Plaintiffs,

vs.

LARRY WOLLERSHEIM, an individual, et al.,

Defendants.

AND RELATED COUNTER-CLAIMS

CV 85-711 JMI (Bx)
CV 85-7197 JMI (Bx)

DEFENDANTS [illegible] OUNTER-CLAIMANTS' [illegible]ITION TO PLAINTIFFS [illegible] OUNTER-DEFENDANTS [illegible]ION FOR PROTECTIVE ORDER RE FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS OR THINGS AND FOR SANCTIONS

DATE: June 10, 1992
TIME: 5:00 P.M.
CTRM: Hon. James G. Kolts
Special Master,
at the Pasadena
Hilton Hotel

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I.

INTRODUCTION

Defendants aand Counter-Claimants David Mayo and the Church of the New Civilization and Defendants Harvey Haber, John Nelson, Vivien Zegel and DeDe Reisdorf submit this Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion For a Protective Order. The focus of Plaintiffs' Motion are two tape recordings admittedly in the possession of Plaintiff CSC which purportedly contain candid discussions concerning the re-organization of the corporate statues of the Church of Scientology, including the Plaintiffs herein. In addition to being relevant to Defendants' defense of the Plaintiffs' complaints (recommended for dismissal by the Special Master) the tapes are directly relevant to Defendants' counterclaims and involve such seminal issues as management and control, conspiracy, alter ego, commingling of assets, malice and intent. Nevertheless, the Plaintiffs act as if they have heard this for the very first time, although, in actuality, they have litigated analogous issues involving their refusal to produce the same tapes in response to other discovery requests for over seven years, all the way to the United States Supreme Court, and lost.

Plaintiffs' Motion raises a simple question -- is there any justifiable reason for the Court to preclude production of non-privileged, non-cumulative, tape recordings directly responsive to Defendants' document request? The simple answer is -- no. Whatsmore, the obstacles Plaintiffs have placed in Defendants' path, depriving them of essential discovery other courts have determined to be produceable is intentionally in bad faith and requires the imposition of substantial sanctions designed to curb Plaintiffs' ongoing, uninterrupted discovery abuse. For all of these reasons, and for those set forth below, Plaintiffs' Motion for a Protective Order should be denied and the two tapes at issue should be ordered produced without further delay.

II.

STATEMENT OF FACTS RELEVANT TO PENDING MOTION

A. The Pending Document Request

On March 26, 1992, Defendants and Counter-Claimants served their Fifth Request For Production of Documents and Things on Plaintiffs and Counter-Defendants, and each of them, (hereinafter "the request")[1] requesting in its entirety as follows:

> "The audio tapes of two meetings of the Mission Corporate Category Sort-out project identified in U.S. v. Zolin, 905 F.2d 1344 (9th Cir. 1990), and held admissible under the crime-fraud exception to the attorney-client privilege."

On April 28, 1992, Counter-Defendant Church of Scientology of California ("CSC") responded to said request by refusing to produce the designated tapes and instead tendered the following objections:

- That a discovery cut-off of September 8, 1989 previously imposed by Judge Pfaelzer, had passed;

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[1] This document request is actually the sixth request propounded by Defendants and Counter-Claimants and was inadvertently miscaptioned. All references herein to the "Fifth Request" pertain exclusively to this request.

- That the evidence sought was irrelevant (F.R.Civ.P. 26(b));
- That the request was tendered for an improper purpose (i.e., to harass and delay) (F.R.Civ.P. 26(g)); and
- That the request was the result of collusion between Joseph Yanny, the IRS, and Defendants' legal counsel herein.

The remaining Counter-Defendants, Religious Technology Center ("RTC"), Church of Scientology International ("CSI"), and Church of Spiritual Technology ("C.O.S.T."), all filed similar objections, although claiming that the tapes were not in their possession, custody or control. Based upon their objections, Plaintiffs and Counter-Defendants, jointly filed this Motion for a Protective Order, pursuant to F.R.Civ.P. 26, and additionally requested sanctions from Counter-Claimants and their legal counsel for propounding allegedly irrelevant discovery and for doing so for an ostensibly improper purpose.

B. The Mission Corporate Category Sort-Out Project

Starting in 1980, various de jure and de facto officials of the Church of Scientology Plaintiffs herein and their predecessor organizations commenced a project known as the Mission Corporate Category Sort-Out (hereinafter "MCCS"). Said project was intended to review the corporate relationships between Church of the Scientology's public corporations (at that time headed by Plaintiff CSC) and L. Ron Hubbard. The purpose of the "mission" was to propose and effectuate changes in the Church Scientology's corporate structure and relationships in order to;

> (1) shield the fact that Scientology corporations and organizations were centrally controlled and constituted but one legal entity which would be disguised; and
>
> (2) establish separate lines of defense to civil lawsuits as well as the ongoing tax investigation of the Internal Revenue Service.

Transcript of Proceedings, Church of Scientology of California v. Armstrong, L.A.S.C. Case No. 420153, Testimony of Laurel Sullivan, page 3023 line 20, to page 3026, line 2, page 3055, line 20, to 3056 line 18. (All transcript references to the Armstrong trial are attached hereto as Exhibit "A").

Laurel Sullivan, a key team member of this project, subsequently testified under oath in proceedings before the Hon. Paul Breckenridge, Jr., Judge of Los Angeles Superior Court, that the purpose of the MCCS project was:

> "To sort out the problems that were in relation to L. Ron Hubbard and the Church, ... the corporate integrity of corporations, L. Ron Hubbard, the issue of the alter ego phenomenon, L. Ron Hubbard in relation to the Church of Scientology of California."

Deposition of Laurel Sullivan in the Armstrong case at pages 183-184. (Emphasis added.)[2]

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[2] To prevent such adverse testimony in the future, Laurel Sullivan (who at the time was involved in litigation against the Church of Scientology) was offered a "settlement" on the express written condition she not make herself available for testimony in any proceedings advers to the Church of Scientology. As a result, Ms. Sullivan's availability in thise proceedings has been deliberately obstructed by the Plaintiffs herein.

As a direct result of the MCCS project, a major "revision" of the Church of Scientology's corporate structure was publicly announced by a ranking Scientology spokesman, Lyman Spurlock, during a October 17, 1982 meeting of Scientology mission-holders (local Scientology churches). During that meeting Mr. Spurlock, then introduced as "Corporate Affairs Director" (and subsequently named a President of Counter-Defendant C.O.S.T.), described the then existing Scientology enterprise:

> "Prior to the end of 1981 *a few of us* got together and took a look at the corporate structure of the Church with the view in mind of making it more *defensible* and more regular, and to make an overall improvement. Here's how it looked roughly before the end of 1981. We had this one huge corporation known as Church of Scientology of California, CSC."

(Exhibit "C" at ¶ 4). (Emphasis added.)

Spurlock continued to describe how in 1981, pursuant to the MCCS project, Spurlock and "others" proceeded to take CSC apart and create therefrom a trilogy of new corporations:

> "So, in late 1981 we took a look at this and said, this can't go on; *it's not very defensible*, it doesn't make sense. Let's line it up as the Church hierarchy is lined up. So what we did is we split up C of S of C and we reorganized WW, (the world-wide Scientology network) in the following manner."

(Exhibit "C" at pages 5-6 and Chart 2.) (Parenthetical and emphasis added.)

During this public speech, Spurlock continued to explain how many of the functions of the former CSC were then transferred, including the creating of a new 'Mother Church' in the form of Church of Scientology International, and that control of Scientology's technical materials was granted to another new corporation, the Religious Technology Center.

Significantly, the two newly created corporations RTC and CSI together with the revised CSC, (publicly and admittedly organized and re-organized by Lyman Spurlock and "others" pursuant to the MCCS project), are the same three Scientology entities which initiated this litigation in 1985 and constitute three of the four Counter-Defendants herein.

C. The MCCS Tapes

In 1980, two meetings of MCCS participants and certain attorneys participating in the project were tape recorded by representatives of the Church of Scientology. These recordings subsequently were filed as exhibits in a state civil case captioned Church of Scientology of California v. Gerald Armstrong, L.A.S.C. Case No. 420153. Later, as a result of this filing, the tapes became the subject of an I.R.S. subpoena in connection with a on-going criminal investigation of the Church of Scientology.

In the litigation between the I.R.S. and the Church of Scientology surrounding the MCCS tapes, the principal issue was whether the conversations on the tapes were subject to the crime-fraud exception to the attorney-client privilege asserted by the Church of Scientology.

a. The MCCS Tapes Are Subject To The Crime-Fraud Exception To Attorney-Client Privilege

Using a partial transcript of the tapes prepared by the Defendant in the Armstrong case, the I.R.S. sought to have the privilege declared inapplicable. Extensive appeals by the Church of Scientology ensued and, in 1988, the United States Supreme Court remanded the matter to the Ninth Circuit Court of Appeals providing guidelines as to how the crime-fraud exception to the attorney-client privilege was to be established as to the tapes.

Pursuant to the Supreme Court remand, the Ninth Circuit examined the partial transcripts of the tapes from the Armstrong litigation and concluded the tapes were subject to the crime-fraud exception. The basis for the Ninth Circuit holding was that statements on the tapes indicated the MCCS project was intended to cover-up past fraud and to perpetrate future frauds as to the actual legal relationships among the Scientology corporations. United States v. Zolin, 809 F.2d 1411, (9th Cir. 1987) aff'd in part and vacated in part, 491 U.S. 554, 109 S.Ct. 2619 (1989), 905 F.2d 1344 (9th Cir 1990) (on remand) (hereinafter "Zolin"). As the Ninth Circuit held:

> "The partial transcripts demonstrate that the purpose of the MCCS project was to cover up past criminal wrong-doing. The MCCS project involved the discussion and planning for future frauds. (citations omitted). The figures involved in MCCS admit on the tapes that they are attempting to confuse and defraud the U.S. Government. The purpose of the crime-fraud exception is to exclude such transactions from

> the protection of the attorney-client privilege.
>
> We therefore reject the district court's holding that the Government did not make out a showing of intended illegality."

Zolin, supra, 905 F.2d 1345-1346. As a result, the tapes (then on deposit with the Court) became subject to discovery. To that end, both the I.R.S. and private litigants subsequently sought, and obtained, access to the tapes.

b. The Recent Granting of Plaintiff CSC's Petition For Certiorari

On March 3, 1992, in the most recent round of appellate actions in Zolin, a petition for certiorari filed by plaintiff CSC was granted by the Supreme Court. The sole issue on certiorari involves the I.R.S.'s right to possession of the MCCS tapes in furtherance of an on-going investigation as to the tax exempt status of CSI, CSC and RTC.[3]

Most importantly as to the determination of Plaintiffs' pending motion in this case, the Supreme Court is not reviewing Zolin, supra, as to the Ninth Circuit's decision upholding the crime-fraud exception to the attorney/client privilege concerning the tapes, nor is the court deciding whether the MCCS tapes are discoverable in other pending civil actions, (such as this one) against the Church of Scientology. Accordingly, Plaintiffs cannot hide behind their pending Supreme Court petition for writ of certiorari.

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[3] The Supreme Court is to determine whether the United States Court of Appeals for the Ninth District had erroneously issued an order dismissing CSC's appeal as moot because the subject of the appeal, the MCCS tapes, were already released to the I.R.S. by a disinterested third party. That order, dated September 10, 1991, of the Ninth Circuit Court of Appeal held "because it is undisputed that the tapes have been turned over to the IRS in compliance with the summons enforcement order, no controversy exists presently and this appeal is moot". See United States of America v. Frank Zolin and Church of Scientology, No. 91-55506, D.C. No. CV-85-0440-HLH, (Central California), September 10, 1991. (Exhibit "__")

c. The Release Of The MCCS Tapes In Other Private Litigation Involving Plaintiffs

In addition to the I.R.S., counsel for Plaintiffs in a case encaptioned Bent Corydon v. Church of Scientology, Inc., et al., L.A.S.C. Case No. C 604 401 sought by way of discovery to obtain a copy of the MCCS tapes for use in that litigation. The Plaintiffs there, like the Defendants herein, argued that the MCCS tapes were relevant to such issues as alter-ego and lack of corporate integrity among the Scientology corporate entities.

On January 25, 1991, the Honorable Thomas T. Johnson, Superior Court Judge, Retired, named by the Court as a Referee, ordered the Scientology Defendants in that case (including Church of Scientology of California and Church of Scientology International) to permit Plaintiff Corydon access to the tapes:

> "In view of the Ninth Circuit holding, as to the tapes presently under seal, plaintiff have a right to access thereto. Defendants are not to oppose effort to obtain access."

(Referee's Report, January 25, 1991, at 2). Thereafter, on March 26, 1991, the Referee's Report was signed, filed and adopted by the Court, the Honorable Richard C, Hubbell. As a result, Plaintiff Corydon was then able to obtain a copy of the MCCS tapes directly from the Court.

Given the judicially acknowledged overwhelming relevance and probative value of the MCCS tapes to issues common the the Corydon case and this litigation, Plaintiffs' contrived arguments against production in this case, previously rejected in other cases, must fail.

III.

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER SHOULD BE DENIED AND DEFENDANTS' FIFTH DOCUMENT REQUEST SHOULD BE GRANTED

A. The Document Request is Consistent With F.R.Civ.P. 26(b) Requiring That Discovery Be "Relevant To The Subject Matter Involved In The Pending Action"

1. Relevance To Issues Pending In This Case

Plaintiff and Counter-Defendant CSC admits it possesses a copy of the MCCS tapes responsive to Defendants' Fifth Request For Documents and Things, but contends, at least initially, that the tapes are irrelevant. Contrary to Plaintiffs' self-styled conclusion of irrelevance as to the requested discovery, the probative value of Plaintiffs corporate structure to issues in the case is readily demonstrable.[4]

The Counter-Claims herein allege, inter alia, a conspiracy among Counter-Defendants and others to violate the Lanham Act, engage in unfair competition, maliciously libel, and intentionally inflict of emotional distress upon Counter-Claimants. Relevant to all these cause actions are issues relating to alter ego, conspiracy, intent, commingling of assets, and management and control. The documents tapes are directly relevant to, or may lead to the discovery of, further admissible evidence regarding, all of these issues.

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[4] Perhaps of all the conceivable objections raised by a party to discovery, lack of relevance is the least persuasive and should be given little, if any, weight. Geophysical Systems Corp. v. Raytheon Co., Inc., 117 F.R.D. 646 (D.C. Cal. 1987) (Defendants' statement under oath that no responsive documents exist was not determinative of discovery request); see also, Mercer v. Allegheny Ludlum Corp., 125 F.R.D. 43 (S.D.N.Y. 1989) ("Plaintiffs are not, in our judgment, required to accept the disclaimer of non-relevance from Goldman Sacks or its counsel in respect to documents which to date they have not been permitted to inspect").

a. Management And Control, Corporate Structure

The tapes requested by Defendants reflect the genesis of how corporate Plaintiffs and Counter-Defendants herein became to be managed and controlled. Despite the facade of corporate separateness, said Plaintiffs and Counter-Defendants ignore corporate separateness and routinely share both personnel and financial resources to advance their objectives. See, Electromatic (PTY) Ltd. v. Rad-O-Lite of Philadelphia, Inc., 90 F.R.D. 182 (D.Pa. 1981) (Allegations that corporate defendants not operated as independent entities sufficient to support discovery of financial and other transactions among various corporate defendants).

Defendants have further alleged, and evidence such as the MCCS tapes will support, that the Plaintiffs and Counter-Defendants (including C.O.S.T.), although each separately incorporated are, in fact, managed and controlled by the same nucleus of individuals. Plaintiffs and Counter-Defendants continue to dispute this, yet consistently refuse to produce even the most basic and obvious documentation probative of this issue. Unprivileged tapes of how the corporate Plaintiffs herein were initially formed and organized (no matter how modified in the future) are highly probative and direct evidence of this issue.

Simply put, the requested tapes would reveal how Plaintiffs and Counter-Defendants corporate structure was, and still is, actually managed and controlled by one small powerful group which oversees and controls all the functions of the "Church of Scientology", including (RTC, CSI, CSC and C.O.S.T.). Plaintiffs cannot hide this evidence simply based on Plaintiffs' own assertions the evidence on the tapes is not relevant to the very issues Mr. Spurlock indicated the MCCS tapes address.

b. Joint And Several Liability, Alter Ego, Piercing The Corporate Veil

Up to shortly before his death in June, 1986, L. Ron Hubbard exercised de facto control over the Church of Scientology by such mechanisms as the Sea Org and Commodore's Messenger Organization. Since Hubbard's death, that power has been asserted at various times by such individuals as David Miscaviage, Lyman Spurlock, Norman Starkey and Pat and Annie Broeker. In rooting out the true facts, it is essential to identify the key individuals who on a de facto basis actually participated in the formation of the corporate entities who brought these consolidated actions, and are alleged by Counter-Claimants to have controlled such corporations at all times relevant to the events surrounding the Plaintiffs' deliberate retributive campaign directed against David Mayo and the Church of the New Civilization. In order to assess legal responsibility (e.g., joint and several liability) for the acts and conduct forming the basis of Defendants' counter-claims, it is essential that the Court and trier of fact understand how the Church of Scientology is organized and governed.

Former President of Plaintiff RTC, Vicki Aznaran, has testified that the entire Scientology corporate structure was designed to shield those in power from personal liability, and avoid tax and civil judgments. Accordingly, a detail of the intended corporate structure as discussed on the MCCS tapes is absolutely essential to the Counter-Claims allegations that each of the corporate Counter-Defendants is legally responsible for the actions of the orders. Independent Investor Protective League v. Touche Ross, 607 F.2d 530 (2d Cir.), cert. denied, 439 U.S. 895, 58 L.Ed.2d. 241, 99 S.Ct. 254 (1978) (Rule 37 sanctions imposed for failure to produce information regarding Plaintiffs' organization in response to discovery request).

B. There Is Good Cause For An Order To Produce The MCCS Tapes

The statements of Ms. Sullivan and of Mr. Spurlock himself demonstrate that the MCCS project was directly related to the Scientology Counter-Defendants herein. In addition, the statements of Lyman Spurlock clearly demonstrate that subsequent to the MCCS project various changes were made regarding corporate structure. Based on these statements it is obvious that the MCCS documents are likely to lead to, and comprise, admissible evidence.

Moreover, the MCCS tapes are unique. Participants to the meeting are solely under the control of Plaintiffs and others, such as Laurel Sullivan, who have first hand knowledge have been neutralized by Plaintiffs' non-cooperation clauses contained in settlement agreements. Accordingly, the MCCS tapes provide a rare look inside fortress Scientology where the participants knowingly hatched a conspiracy to defraud potential claimants including the United States Government and private litigants.

C. Plaintiffs Are Estopped From Reasserting Previously Litigated Issues As Plaintiffs And Counter-Defendants Had A "Full And Fair" Opportunity to Litigate Their Claims In The Corydon Lawsuit

The doctrine of collateral estoppel, like the related doctrine of res judicata, seeks to protect litigants from the burden of relitigating an identical issue with the same party or his privy and thereby promote judicial economy. Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 328-329, 91 S.Ct. 1434, 1442-1443, 28 L.Ed.2d 785 (1971).

Consistent with these purposes, the United States Supreme Court in Parklane Hosiery Co. v. Shore, (1979) 439 U.S. 322, 58 L.Ed.2d 552, 99 S.Ct. 645 (1979), abolished the mutuality requirement, (i.e., a party could not use a prior judgment or issue determination as an estoppel against an adverse party unless both parties were bound thereby), and further held a plaintiff may "offensively" use the doctrine of collateral estoppel to foreclose a defendant from re-litigation of issues previously resolved against the defendant in an action with another party. The Supreme Court provided for a flexible approach in determining the application of the collateral estoppel doctrine:

> "We have concluded that the preferable approach for dealing with these problems in the Federal Courts is not to preclude the use of offensive collateral estoppel, but to grant trial courts broad discretion to determine when it should apply."

Parklane Hosiery, supra, 439 U.S. at 331, 99 S.Ct. at 651.

Thus, the primary criteria as to the application of the doctrine in that the party against whom issue preclusion is sought had a full and fair opportunity to litigate the issue in the previous action.

In Corydon v. Church of Scientology International, *supra*, plaintiff Bent Corydon similarily moved to compel production of the MCCS tapes as to the defendants therein (Plaintiffs and Counter-Defendants in this case). The MCCS tapes requested in the Corydon lawsuit were requested under almost identical circumstances to this pending case as the the tapes were relevant to show actual management and control of the corporate structure of the Church of Scientology and its corporate entities. Nevertheless, as in the instant litigation, CSI, and CSC objected to the request. The court, granted plaintiff's order compelling the production of the tapes.

Plaintiffs and Counter-Defendants had a "full and fair" opportunity to litigate the discoverability of the MCCS tapes in the Corydon case because the plaintiff's motion to compel was fully briefed, hearings were held, and the issue fairly determined on the merits. In addition, Plaintiffs' and Counter-Defendants' interest in not disclosing the MCCS tapes in the Corydon litigation is identical to their interest in preventing disclosure herein, to prevent potential liability as to an adverse civil judgment. As they had every incentive to litigate those issues fully in the Corydon lawsuit, and have been afforded their day in court thereon, Plaintiffs should now be estopped from re-litigating the identical issue herein.

IV.

DEFENDANTS AND COUNTER-CLAIMANTS' FIFTH DOCUMENT REQUEST WAS DONE FOR A PROPER PURPOSE AND SANCTIONS SHOULD NOT BE IMPOSED UNDER FED.R.CIV.P. 26(G)

Rule 26(g) of the Federal Rules of Civil Procedure provides that a signature of an attorney or party on a discovery request constitutes a certification that the signor has read the request . . . . and that to the best of the signor's knowledge, information, and belief, formed after a reasonable inquiry is: (1) consistent with these rules and warranted by existing law . . . (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay . . . and (3) not unreasonable . . .

A. Reasonable Inquiry Was Made By Defendants And Counter-Claimants

1. Plaintiffs and Counter-Defendants Claim That Request Of The Tapes Are Irrelevant And Done Only To Harass Is Unfounded

Plaintiffs and Counter-Defendants cite Rosin v. New York Stock Exchange, 484 F.2d 179 (9th Cir.), cert. denied, 415 U.S. 977, 94 S. Ct 1564 (1973); O'Brien v. Equitable Life Assurance Society, 14 F.R.D. 141 (D.Mo. 1953); and New Sanitary Towel Supply, Inc., v. Consolidated Laundries Corporation, 24 F.R.D. 186 (S.D.N.Y. 1959) for the proposition that where discovery is irrelevant to any issue in the litigation, or where the sole purpose of discovery is to harass a litigant, the court should grant a protective order seeking to prohibit discovery.

However, in Rosin,, the court did not say that discovery was irrelevant, nor did it issue a protective order against discovery. The court in Rosin held that where a memorandum opinion and order opinion and order are issued dismissing an action, further discovery will not be allowed.

In O'Brien, depositions were deemed unnecessary to document activities after the trial had begun in a case involving a prior refusal to pay benefits under an insurance policy. The facts in O'Brien are substantially different from the facts at bar where tapes are requested which show the corporate structure, management and control of Counter-Defendants corporations.

Similarly, in New Sanitary Supply, Inc., supra, the duplicitative recross-examination of an already thoroughly examined witness which was ruled to serve no other purpose then to harass and oppress litigants is demonstrably distinguishable from this case which involves the proper initial request for relevant, non-cumulative evidence directly related to Plaintiffs' and Counter-Defendants' liability.

2. Discovery Cut-Off

On May 8, 1989, Judge Pfaelzer set a trial date premised upon Defendants having up until September 8, 1989 to conduct discovery. Defendants pursued both documentary and deposition discovery in the Summer of 1989 until such time as Plaintiffs' refused to comply with document requests and filed a series of motions for protective orders effectively blocking all pending depositions. Accordingly, Defendants filed a series of discovery motions designed to compel Plaintiffs to produce documents necessary to conduct depositions of Plaintiffs and Counter-Defendants. Although all of the discovery motions were granted, Plaintiffs refused to comply, resulting in the recommended dismissal of their complaints. The Plaintiffs' current Motion for a Protective Order perpetuates Plaintiffs' discovery obstructionism and interferes with Defendants' ability to proceed with their counter-claims.

As the Special Master recently noted when dismissing Plaintiffs' complaints:

> "Sadly, the case remains dead-locked in discovery matters. It is nowhere near ready to proceed to trial."

(Order, 4/17/92).

Under the circumstances, when one party is prevented from completing its discovery as a direct result of its adversary's discovery recalcitrance it cannot be prejudiced by an arbitrary imposition of a discovery cut-off. The District Court implicitly recognized this when he authorized the Special Master to:

> "make recommendations as to whether further discovery should be permitted as well as the scope and duration of discovery."

(Referral Order, 9/12/89).

Moreover, Defendants and Counter-Claimants have indicated from the very first hearing before the Special Master that the resumption of their disocvery was their primary focus in filing six motions to compel as well as oppositions to all of Plaintiffs' Motion for Protective Orders. For Plaintiffs now to argue that discovery is over after the parties have spend the last 2 1/2 years litigating over discovery is patently frivolous.

3. **Alleged I.R.S. Collusion With Defendants**

The Ninth Circuit Court of Appeals has previously held that the MCCS tapes are subject to the crime-fraud exception of the attorney-client privilege and thus even Plaintiffs (in both their objections to the Fifth Request For Documents and Things, and in their pending motion for protective order) do not raise the attorney-client privilege as an objection.

Instead, Plaintiffs' contend that, "When the Supreme Court remands the case to the Ninth Circuit to reinstate the appeal, a likely outcome is that the IRS will be ordered to return the MCCS tapes to CSC." Plaintiffs' therefore argue that the "answer to the IRS's dilemma", is to have "private litigants or their attorneys (Defendants) request the documents in document requests in that civil litigation." However, Plaintiffs, who can no longer hide under the cloak of the attorney-client privilege, apparently are now trying to obfuscate legitimate discovery by alleging "collusion" between IRS agents and Defendants. Nevertheless, there is not now, and neither has there ever been, any such collusion. Plaintiffs have let their imagination run wild, while tethering their common sense. (See Declarations of Defendants' counsel submitted in Opposition to Plaintiffs' Motion to Dismiss).

B. Sanctions Should Not Be Imposed Against Defendants

Plaintiffs and Counter-Defendants reference Insurance Benefit Administrations, Inc. v. Martin, 971 F.2d 1354 (9th Cir. 1984) (Sanctions imposed against counsel for improperly certifying pleadings); and Micro Motion, Incorporated v. Kane Steel Co., Inc., 894 F.2d 1318 (Fed.Cir.1990) (Plaintiff was denied discovery request seeking disclosure of a non-party's confidential business information) for the proposition that sanctions should be imposed against Defendants and Counter-Claimants under Fed.R.Civ.P. 26(g) requiring that the party or his attorney seeking discovery must "certify" that he has made a "reasonable inquiry" that the request is warranted).

However, in Micro Motion Incorporated, the court did not impose any sanctions against plaintiff, but denied Plaintiffs' discovery request simply because it saw a possibility for an abuse of discovery of disclosing private business information from competing non-parties. That case has no relevance to this case.

Similarly, in Insurance Benefit Administrators, Inc., defendants' attorney certified amended pleadings that contained factual mistakes of crucial issues in the case. The court imposed sanctions pursuant to Rules 11, 26(g) and 37 of the Federal Rules of Civil Procedure and 28 U.S.C. § 1927. Again this is not relevant to the circumstances involved in this case.

In no way do these cases relate factually to the pending case, which involves the proper certification of a discovery request for the MCCS tapes which are non-privileged and clearly relevant to Defendants and Counter-Claimants.

Accordingly, Plaintiffs request for sanctions must be denied. By contrast, however, because Plaintiffs' Motion for a Protective Order should be denied, sanctions should be imposed against Plaintiffs, pursuant to Rule 26(c), for filing an ill-conceived motion for a protective order.

V.

CONCLUSION

For all the reasons set forth above, Plaintiffs' Motion for a Protective Order should be denied. The issues raised by Plaintiffs have been conclusively decided against them by the United States Supreme Court, the Ninth Circuit Court of Appeals and the Los Angeles County Superior Court. The present Motion offers nothing new, but rather, lamely contends the tapes are irrelevant and sought for an improper purpose. Neither is the case. The tapes are relevant and essential evidence and Plaintiffs have come forward with no legitimate reason to support this Court issuing an order blocking Defendants' access to them.

Dated: May 27, 1992

Respectfully submitted,

LAW OFFICES OF JEROLD FAGELBAUM

By
Jerold Fagelbaum
Attorneys for Defendants and
Counter-Claimants David Mayo and
Church of the New Civilization

BRIGHT & POWELL

By
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4225

FILED

JAN 24 1995

HOWARD HANSON
MARIN COUNTY CLERK
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1995 JAN 24 P 3:45

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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

BY FAX

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation,

Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through 25, inclusive,

Defendants.

CASE NO. 157 680

[CONSOLIDATED]

PLAINTIFF'S OBJECTIONS TO ARMSTRONG'S EVIDENCE SUBMITTED IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH, AND ELEVENTH CAUSES OF ACTION

DATE: January 27, 1995
TIME: 9:00 a.m.
DEPT: 1

TRIAL DATE: May 18, 1995

Plaintiff Church of Scientology International (hereinafter "the Church") hereby submits the following evidentiary objections to defendant Gerald Armstrong's evidence in opposition to the Church's motion for summary adjudication of the fourth, sixth and eleventh causes of action.

Plaintiff objects to specific points in the declarations of Gerald Armstrong and Ford Greene, and the items of evidence proffered therewith, on the grounds of inadmissibility because of incompetency, lack of preliminary or foundational facts, irrelevancy, hearsay, incorrect form, improper opinion, lack of probative value under section 352 of the California Evidence Code, and failure to request judicial notice. Moreover, much of the offered "evidence" is cumulative or repetitive and serves no purpose other than defendant's intent to prejudice the Court against plaintiff.

SPECIFIC OBJECTIONS TO EVIDENCE:

A. Objections To Exhibit 1, Declaration Of Gerald Armstrong, And To Exhibits A - F Thereto

1. Paragraph 2: Plaintiff objects to the averments of this paragraph, p. 2 lines 1-13, on the grounds that the averments are irrelevant, and contain improper opinion. Plaintiff further objects to Exhibit 1-A, "decision of Judge Paul G. Breckenridge" on the grounds it (1) lacks foundation and authentication as a correct copy, (2) lacks relevance, and (3) has not been properly noticed.

2. Paragraph 3: Plaintiff objects to the averments contained in lines 15-17, on the grounds that they (1) are not based on personal knowledge, (2) lack relevance, and (3) contain improper

opinion.

3. Paragraph 5: Plaintiff objects to the averments contained in this paragraph, on the grounds that they (1) lack relevance, (2) to the extent that Armstrong's alleged 1986 comments are offered to prove the truth of the matters asserted therein, constitute inadmissible hearsay, and (3) violate the parol evidence rule.

4. Paragraph 6: Plaintiff objects to the averments contained in this paragraph, on the grounds that they consist entirely of inadmissible hearsay, that is, the claimed out-of-court statements of non-party Michael Flynn, which are offered by Armstrong to prove the truth of the matters asserted in those statements. Plaintiff further objects to these averments on the grounds that they lack relevance and violate the parol evidence rule.

5. Paragraph 7: Plaintiff objects to the averments contained in this paragraph, 4:15 - 5:2, on the grounds that they consist entirely of inadmissible hearsay, that is, the claimed out-of-court statements of non-party Michael Flynn and Eddie Walters, which are offered by Armstrong to prove the truth of the matters asserted in those statements. Plaintiff further objects to these averments on the grounds that they lack relevance and violate the parol evidence rule.

6. Paragraph 8: Plaintiff objects to the averments contained in this paragraph, on the grounds that they (1) lack relevance, (2) to the extent that the alleged 1986 comments are offered to prove the truth of the matters asserted therein, they constitute inadmissible hearsay, (3) the averments contain improper opinion, and (4) violate the parol evidence rule.

7. Paragraph 9: Plaintiff objects to the averments contained in this paragraph, on the grounds that they consist entirely of inadmissible hearsay, that is, the claimed out-of-court statements of non-party Michael Flynn, which are offered by Armstrong to prove the truth of the matters asserted in those statements. Plaintiff further objects to these averments on the grounds that they lack relevance and violate the parol evidence rule.

8. Paragraphs 10 and 11: Plaintiff objects to the averments contained in these paragraph, on the grounds that they (1) lack relevance, (2) consist entirely of improper opinion, and (3) violate the parol evidence rule.

9. Paragraphs 12 and 13: Plaintiff objects to the averments contained in these paragraphs, on the grounds that they (1) lack relevance, (2) to the extent that the alleged 1986 comments are offered to prove the truth of the matters asserted therein, they constitute inadmissible hearsay, (3) the averments contain improper opinion, and (4) violate the parol evidence rule. Plaintiff further objects that some or all of the statements contained in this paragraph directly contradict prior admissions of Mr. Armstrong, and thus should be disregarded. Advanced Micro Devices, Inc. v. Great American Surplus Lines Ins. Co. (1988) 199 Cal.App.3d 791, 800-801, 245 Cal.Rptr. 44.

10. Paragraph 14: Plaintiff objects to the averments of this paragraph on the grounds that the averments lack relevance. Plaintiff further objects to Exhibits 1-B and 1-C on the grounds that they (1) lack foundation, in that Armstrong himself avers that he never saw the documents and has no personal knowledge as to their authenticity, and (2) lack relevance.

11. Paragraph 15: Plaintiff objects to the averments contained in this paragraph, on the grounds that they (1) lack relevance, (2) to the extent that the alleged 1986 comments are offered to prove the truth of the matters asserted therein, they constitute inadmissible hearsay, and (3) the averments contain improper opinion.

12. Paragraph 17: Plaintiff objects to the averments contained in these paragraphs, on the grounds that they constitute inadmissible hearsay and lack relevance. Plaintiff further objects to Exhibits 1-E and 1-F on the grounds that they are not properly authenticated, lack foundation, and are inadmissible hearsay.

B. Objections To Exhibit 2, Declaration Of Ford Greene, And To Exhibits A - D Thereto

13. Paragraph 7: Plaintiff objects to Exhibits C and D, on the grounds that they (1) lack relevance, and (2) lack authentication, in that Mr. Greene has and avers no personal knowledge concerning the creation of the documents.

C. Objections to Armstrong's Request For Judicial Notice, And to Exhibits A - F Thereto

14. Plaintiff objects to the admission of Exhibits B, C, D and F, on the grounds that the exhibits (1) lack relevance and (2) are more prejudicial than they are probative. Evid. Code § 352. Plaintiff objects to the admission of Exhibit A on the grounds that it (1) lacks relevance, and (2) is incomplete.

D. Objections to Armstrong's Supplemental Declaration, And Exhibits A - N Thereto

Plaintiff objects to this declaration and its exhibits in its entirety, for all of the reasons stated in Church of Scientology

International's Ex Parte Application For An Order Striking Armstrong's Late-Filed Supplemental Declaration In Opposition To Plaintiff's Motion for Summary Adjudication Of The Fourth, Sixth And Eleventh Causes Of Action Of Second Amended Complaint, Or, In The Alternative, For An Order Sealing Exhibits A And M To Said Declaration; Request For Sanctions [C.C.P. § 437c(i)], which is incorporated herein by reference. Plaintiff moves that this supplemental declaration be stricken, together with all of its exhibits, and requests that Armstrong and his counsel be sanctioned for its filing pursuant to Code of Civil Procedure Section 437c(i) in the amount of $5,000.

Dated: January 24, 1995

Respectfully submitted,

MOXON & BARTILSON

By:
Laurie J. Bartilson

Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On January 24, 1995, I served the foregoing document described as PLAINTIFF'S OBJECTIONS TO ARMSTRONG'S EVIDENCE SUBMITTED IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF FOURTH, SIXTH, AND ELEVENTH CAUSES OF ACTION on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[x] BY FAX AND MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on January 24, 1995 at Los Angeles, California.

[ ] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on ___________ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Laurie Bartilson
Print or Type Name

Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

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[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

[x] BY MAIL

[ ] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

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Laurie Bardikoff	Laurie Bardik
Print or Type Name	Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)